

Regional Guidance Technical Assistance Grant Program

U.S. Environmental Protection Agency
Office of Solid Waste and Emergency Response
Community Involvement and Outreach Center
Washington, DC 20460
(Final Draft)



1436670



Table of Contents



Chapter 1: Introduction	1
Chapter 2: TAG Program Overview	3
Chapter 3: Responsibilities of Key Staff	5
3.1 Role of the TAG Project Officer or TAG Regional Coordinator	5
3.2 Suggested Roles of Other Staff	6
Chapter 4: TAG Availability	9
4.1 General Availability	9
4.2 Special Circumstances	9
Chapter 5: Eligibility	13
5.1 Eligibility/Ineligibility	13
5.2 How a Group Can Become Eligible If Currently Ineligible	14
5.3 Encouraging Consolidation of Groups	14
5.4 Incorporation	15
Chapter 6: The TAG Application Process	17
6.1 Processing Letters of Intent (LOIs)	17
6.2 Requests For Application Filing Extensions	18
6.3 Prioritizing LOIs	18
6.4 Application Requirements	19
6.5 Determining the Funding Period	20
6.6 Application Review and Award	20
6.7 Application Review System	22
6.8 Tier One Review	23
6.9 Tier Two Review	26
6.10 Matching Share Requirement	27
Chapter 7: Waivers	35
7.1 Waivers to the 20 Percent Matching Share Requirement	35
7.2 Waivers to the \$50,000 TAG Award Limit	35
7.3 Amount of Waiver	36
7.4 One-Time No Cost Extension	36
7.5 Other Requests for Extensions	36
Chapter 8: Recipient Responsibilities	37
8.1 Obtaining Intergovernmental Review (IGR) of TAG Applications	37
8.2 Incorporating as a Non-Profit Corporation	37





8.3 Obtaining Tax-Exempt Status From the Internal Revenue Service	38
8.4 Reporting Requirements	39
8.5 Record Keeping	40
8.6 Other Recipient Responsibilities	41
Chapter 9: Procurement	43
9.1 Procurement Under Grant Agreements	43
9.2 Helping Recipients Identify Qualified Technical Advisors	45
9.3 Procurement of Grant Administrators	47
9.4 Restrictions on Hiring Technical Advisors or Grant Administrators	47
9.5 Contracts with Technical Advisors and Grant Administrators	47
9.6 EPA Review of Contracts	49
9.7 Equipment and Supplies	50
Chapter 10: Budget and Finance	51
10.1 Internal Budgeting	51
10.2 Commitment and Obligation of Funds	52
10.3 Forms of Payment and Payment Procedures	53
10.4 Advance Payments	54
10.5 Cost Recovery	55
Chapter 11: TAG Closeout, Termination, and Enforcement	57
11.1 Closing Out a TAG	57
11.2 Enforcement Actions	58
11.3 Termination	59
11.4 Appeals and Disputes	59
Chapter 12: Other Technical Resources/Community Grants	61
12.1 The Technical Outreach Services for Communities (TOSC) Program	61
12.2 Technical Assistance for Public Participation (TAPP) (U.S. Department of Defense)	62
12.3 Citizen Monitoring and Technical Assistance Fund (U.S. Department of Energy)	63
12.4 Potentially Responsible Parties (PRPs)	63
12.5 Other Community Grants	64
Resources	67

Chapter 1: Introduction



The cleanup of hazardous waste sites is a complicated effort that can have substantial implications for nearby communities. While community involvement in site decision making is an essential aspect of the Superfund cleanup process, the technical issues surrounding a site frequently are hard for the average citizen to understand. Congress recognized the difficulties technical issues can present to community involvement when it reauthorized the Superfund program in 1986. Congress included provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, to address these barriers to community involvement. Specifically, Section 117(e) of CERCLA authorizes the President to make grants of up to \$50,000 to citizen groups who wish to obtain technical assistance. These grants are intended to help citizens—all people affected, regardless of their legal status—interpret information related to Superfund cleanups at sites listed on the National Priorities List (NPL) or proposed for listing where a response action is underway.



Chapter 2: TAG Program Overview



Through Executive Order 12580, the President, in consultation with the Attorney General, delegated authority to implement Section 117(e) of CERCLA to the U.S. Environmental Protection Agency (EPA). EPA issued a final rule in October 1992 that established the policies and procedures for the Technical Assistance Grant (TAG) program. EPA promulgated another final rule on October 2, 2000, to replace the 1992 rule. The October 2000 regulation eases some of the administrative burden associated with TAGs.

While the immediate and practical goal of this guidance is to ensure consistent understanding and administration of the TAG program nationwide, the ultimate goal is to ensure that all eligible interested communities affected by abandoned hazardous waste sites have access to independent technical assistance. This document is intended for regional and Headquarters personnel. It lays out the policies and procedures for awarding, administering, and closing out TAGs. It interprets the October 2000 final TAG rule for day-to-day implementation of the TAG program and serves as the primary source of information for TAG administration. All regions must follow the guidance contained in this document as closely as possible. This is necessary to ensure that EPA implements the TAG program in the most consistent and fair manner possible.

This guidance manual:

- Outlines the responsibilities of key EPA staff in implementing this program;
- Provides an overview of the application solicitation and receipt processes;
- Provides checklists for reviewing and evaluating applications and awarding TAGs;
- Outlines the responsibilities and requirements of TAG recipients;
- Provides guidance for TAG project administration and oversight;
- Describes alternative administrative and programmatic approaches;
- Provides an overview of the enforcement and termination procedures; and
- Includes samples of public notifications and similar tools.

Other guidance and regulations also are important to implementation of the TAG program. In particular, users of this manual should be knowledgeable about Volume 40 of the *Code of Federal Regulations* (CFR) Part 35, Subpart M, Technical Assistance Grants, final rule (October 2, 2000). Subpart M codifies the policies and procedures for TAGs awarded by EPA to citizens' groups. Users of this manual also should be familiar with the procedures and policies outlined in Volume 40, Part 30, which contains EPA's general grant regulations for non-profit organizations and is EPA's regulatory interpretation of the Office of Management and Budget's (OMB) Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*. When using these documents, the provisions in the final TAG rule (Part 35) take precedence over other regulations pertaining to the TAG program, including Part 30. Issues addressed in Part 30, but not in Part 35, are ruled by provisions in Part 30. (Copies of these regulations are included in Resource Section A.)

TAG personnel should be knowledgeable about the *Superfund Technical Assistance Grant (TAG) Citizen's Handbook*. This manual provides citizens with detailed instructions on how to obtain and manage a TAG and procure a technical advisor. The *Citizen's Handbook* is available, upon request, from EPA regional staff. EPA staff should be familiar with the information and directions provided to citizens in this handbook to ensure that regional implementation of the program is consistent with the instructions, information, and guidance provided to the general public.



EPA personnel should also be familiar with the *Superfund Community Involvement Handbook and Toolkit*. The *Handbook and Toolkit* provides requirements, guidance, and suggestions for conducting community involvement activities during the planning and implementation stages of remedial and emergency response actions. The TAG program is a major public involvement effort that complements EPA's existing Superfund community involvement activities. The time regional staff spend with a TAG recipient cannot substitute for other required community involvement activities nor should the schedule for a response action be affected by the TAG application process. EPA has an obligation to involve the community as a whole—not just a single TAG recipient—in the Superfund cleanup process.

Chapter 3: Responsibilities of Key Staff



Each region has at least one staff member who devotes a significant amount of time to TAG implementation, but the process works best when several staff have a role in the program. Some regions have a "TAG team" that may be comprised of the EPA project officer/regional TAG coordinator, the site Remedial Project Manager (RPM), the Community Involvement Coordinator (CIC), a representative from the regional grants management office (GMO), an attorney from the office of regional counsel (ORC) and, at times, a representative from the regional financial management office (FMO) for site-specific special accounts. Sometimes, remedial branch or section chiefs or other members of regional management are included.

In some regions, TAG coordinators are part of a "site team" responsible for overall coordination of site activities. This team approach is more informal in some regions, but the goal is the same: well-coordinated administration of a TAG.

The regional TAG coordinator, who frequently is also the project officer for a region's TAGs, is the primary staff member with responsibility for overseeing a regional TAG project. The person who fulfills this role varies from region to region. Some EPA project officers/regional TAG coordinators are employed in the community involvement section of the Superfund program or the region's public affairs office. Others fall organizationally within their regional GMO or within a grants or contracting office within the Superfund program. Some regions have several individuals who implement the TAG program: one individual might have responsibility for the community involvement portion of a TAG while others might fulfill the role of project officer or regional TAG coordinator.

Since one organizational structure for TAG responsibilities is not necessarily better than another, regions should adopt specific staffing arrangements that best suit their situations. What defines a successful regional TAG program is commitment to assisting communities—those interested in applying for TAGs and those that already have TAGs—and coordinating closely with Superfund site personnel and other EPA staff responsible for administering and overseeing the grants process.

3.1 Role of the EPA Project Officer or TAG Regional Coordinator

The EPA project officer/regional TAG coordinator generally serves as the team leader throughout the TAG process and as the applicant's main contact with EPA. The EPA project officer/regional TAG coordinator has the basic responsibility for monitoring all work performed under the EPA TAG agreement. He or she does not have to be an expert on all aspects of the administrative, procurement or financial requirements of the TAG process, but must be able to identify situations requiring coordination with other EPA staff. Coordination is especially important with the regional GMO, the regional FMO, and other support units that perform the administrative tasks required for evaluating applications, awarding TAGs, monitoring financial progress reports, and processing reimbursement requests.

The duties of the EPA project officer/regional TAG coordinator will vary during the application review and oversight process. During the application review and approval process, these responsibilities may include:

- Serving as the applicant's primary EPA contact;
- Coordinating the administrative, programmatic, and legal review of the application with the members of the review team, which may include the GMO, ORC, and Superfund remedial and community involvement staff;



- Determining whether a site-specific special account has been established for a particular site and, if so, whether the account has a balance available to pay for the TAG;
- Participating in the review of the TAG application and the award of the TAG; and
- Coordinating with the EPA spokesperson during the announcement of a TAG award, which involves issuing a press release to local newspapers.

After a TAG has been awarded, the EPA project officer/regional TAG coordinator is the EPA official directly responsible for the oversight of the TAG project. During this stage, the EPA project officer/regional TAG coordinator's duties may include:

- Establishing and maintaining the official record of activities for the TAG;
- Reviewing subagreements (contracts) before the recipient awards them to a technical advisor or grant administrator;
- Approving minor modifications to the workplan or the budget;
- Reviewing financial reports, progress reports, and correspondence that have a significant bearing on the performance of the TAG recipient or technical advisor;
- Working with the grants or financial office and the TAG recipient when there are any problems regarding reimbursement payments; and
- Recommending administrative action if the recipient fails to comply with EPA grant and procurement regulations and any special conditions of the TAG award.

After the TAG project has been completed, the EPA project officer/regional TAG coordinator is responsible for overseeing the closeout of the TAG and procedures for retention of TAG project records.

3.2 Suggested Roles of Other Staff

In addition to the EPA project officers/regional TAG coordinators, several other staff collaborate in the administration and oversight of a TAG as outlined below:

Grants Management Office: The structure and composition of regional TAG teams vary somewhat, but most include a grants management specialist, and in some regions, may include a grants policy specialist. It is advisable that grants specialists be included on application review teams because of their knowledge of EPA's grants process. In several regions, a grants specialist also reviews and provides comments on the draft contracts for a recipient's technical advisor, although this role is not required. The GMO also is responsible for making the award and for closing each TAG, upon request from the EPA project officer/regional TAG coordinator.

Regional Superfund Office/Office of Public Affairs: Regional Superfund and public affairs staff should, and in most regions do, play an active role in the TAG program. Effective programmatic review of a TAG application requires knowledge of the site, the community, and the schedule for remedial work. The site's RPM and CIC usually are best able to determine whether an applicant is representative of a community and whether a group's proposal presents a feasible plan for using the services of a technical advisor throughout the Superfund cleanup process. The RPM should be able to advise whether a special account has been established for that site and, if so, whether all of the monies in the account have already been expended or earmarked for other response expenditures. (See Section 10.1 of this guidance for information on site-specific special accounts.)



Once the TAG is awarded, the CIC and RPM should interact directly with the TAG recipient, as appropriate. The RPM and the CIC should assume responsibility for coordinating with all site technical and legal staff to provide information to the public on the technical aspects of the site cleanup process. They also should be available to answer questions from the technical advisor and the TAG recipient regarding site-related activities and documents. In addition, Superfund staff should ensure that the EPA project officer/regional TAG coordinator and the TAG recipient and its technical advisors are kept apprized of any schedule changes in site work, and that the TAG recipient and its technical advisor have access to all publicly available documents related to the site.

Regional Financial Management Office: Financial management specialists in each region establish and maintain the official financial records related to grant agreements. The FMO usually is responsible for processing financial transactions related to a TAG award, including the obligation and disbursement of funds to TAG recipients. It also is responsible for monitoring any site-specific special account that may have been established.

Regional Administrator's Office: The regional administrator (RA) or his/her designee may waive a group's matching share and may also waive the \$50,000 TAG award limit and provide additional TAG funds if the site is considered complex and if the TAG recipient qualifies for additional funds.

Office of Regional Counsel (ORC): In some regions, the TAG review team includes an attorney from the ORC responsible for the legal review of each application. In others, an attorney provides advice, as needed, on legal matters such as termination for cause, suspension, and debarment actions. If the site has a special account, the attorney can provide advice on whether the underlying settlement contains any restrictions on the use of the special account monies. There also may be litigation or other enforcement actions ongoing at a site. The EPA project officer/regional TAG coordinator must consult with the regional attorney and enforcement program staff whenever enforcement activities are anticipated or ongoing.

Headquarters Grants Administration Division (GAD): The Headquarters GAD Grants Policy, Information and Training Branch is responsible for providing policy interpretation assistance as needed.

Headquarters Office of Congressional Liaison (OCL): The Headquarters OCL receives TAG award notifications from GAD and notifies the appropriate Congressional delegation prior to notification of the recipient. This notification process serves an informational function and does not require any response from the Congressional delegation.

Office of Inspector General (OIG): OIG is responsible, among other things, for any EPA-requested audits related to TAG agreements.

Office of Solid Waste and Emergency Response (OSWER): OSWER's role is to resolve policy issues, develop fact sheets, manuals, and other TAG program-related support materials; troubleshoot problems that arise; and provide overall coordination for the TAG program.

Office of Enforcement and Compliance Assurance (OECA): OECA's role is to promote EPA's "Enforcement First" policy and, where enforcement options are unavailable, to encourage cost recovery efforts.



Chapter 4: TAG Availability



4.1 General Availability

TAGs are available any time after a site is listed or proposed for the NPL. However, the best opportunity for effective community involvement exists during the Remedial Investigation/Feasibility Study (RI/FS) or the "pre-Record of Decision" (pre-ROD) stage. This is the stage in the Superfund cleanup process when most decisions about how to respond to site contamination are made and when the technical advisor will be most useful to the TAG recipient group and to the community. Nonetheless, there is a valuable role for TAGs throughout the Superfund process. As more sites move through the remedial process into operation and maintenance (O&M), the program should be prepared to sustain TAGs into the later stages of the Superfund pipeline.

The earliest that TAG monies are available is at the start of the response action, which is defined as the time when there is a guarantee of funding, and funds are set aside by EPA, other Federal agencies, States, or Potentially Responsible Parties (PRPs) to begin response activities at a site. EPA's annual *Superfund Comprehensive Accomplishments Plan (SCAP)* is the document that reflects the set-aside, or formal guarantee, of funding during the coming fiscal year. This schedule ensures that sufficient time is available for interested groups to consolidate and formally apply for a TAG. This schedule also gives EPA an opportunity to process the application and provide the TAG recipient time to obtain the services of a technical advisor before work at the site actually begins.

First, EPA should allow time for informing the public of the availability of a TAG well in advance of a response action, if possible. This advance notification can be accomplished in several ways. First, to ensure that all eligible groups in a community have an equal opportunity to apply for a TAG, community involvement activities—including mailings, meetings, and/or public notices—should be conducted to notify the public about the availability of TAGs.

Next, the initiation of community interviews by CICs well in advance of the start of a site response action will enable EPA personnel to identify: (1) individuals and groups in a community who want technical assistance; (2) individuals and groups to add to EPA's mailing list; (3) communities that are likely to submit applications; and (4) those likely to submit competing applications. In cases where there are competing groups interested in applying for a TAG, EPA staff should strongly encourage them to form a coalition and submit only one application. However, EPA does not require groups to consolidate. (See Section 5.3 of this guidance.)

Finally, early development of a Community Involvement Plan (CIP) that details projected site activities may prevent delays in the TAG application and review process. The CIP can help community groups with their TAG applications by providing valuable information necessary for developing their work plan. If there is no CIP, applicants will have to determine a reasonable schedule for site activities on their own or from discussions with the site's RPM.

Every effort should be made to inform site communities of the availability of TAGs as early as possible. Careful community involvement planning will allow the TAG program to be implemented effectively and integrated smoothly into the overall Superfund cleanup effort.

4.2 Special Circumstances

Circumstances may arise that create special challenges for coordination and management of TAGs. These include:

- NPL sites that overlap more than one region or State;



- Federal facilities;
- Sites delisted from the NPL; and
- Sites with subsequent, non-concurrent TAG recipients.

Sites That Overlap More Than One Region or State: TAG procedures at NPL sites spanning more than one State and/or EPA region parallel the procedures of the technical remediation program at the site. In such cases, the lead region is the one in whose jurisdiction the majority of the site lies. Citizens' groups should file their TAG applications with the lead region.

Multi-jurisdictional sites are more complicated than sites located within one State or region. It is entirely possible that citizens' groups from a region other than the lead region will view themselves as being most affected by site contamination, despite the fact that the majority of the site lies in another jurisdiction. If citizens' groups from more than one region are interested in a TAG for the same site, the existence of a political border between them may lessen their interest in forming a coalition to apply for a TAG. Sometimes, a neutral third-party facilitator can help community groups explore the pros and cons of consolidation. (EPA can offer facilitation services to communities through its Alternative Dispute Resolution [ADR] contract.)

EPA's community outreach at multi-jurisdictional sites should be particularly vigorous. EPA officials must be extremely scrupulous when evaluating applicants competing for a TAG at a multi-jurisdictional site to avoid any appearance of bias towards applicants residing in the lead regional office's jurisdiction.

In addition to the expanded community involvement efforts previously described, lead regional office personnel at sites spanning two or more political jurisdictions should keep personnel of other affected regions informed of TAG developments, including receipt of TAG applications, the groups' decision on consolidation, and award of the TAG. Affected regional staff should be invited to all pertinent meetings. Offices other than the lead region, however, normally will have fewer resources committed to site activities.

Federal Facilities: TAGs may be awarded to groups of eligible individuals affected by a Superfund site at a Federal facility. The authority of Section 117(e) vested in the President to award TAGs was delegated to EPA by Executive Order 12580, but that order did not authorize EPA to re-delegate that authority to any other executive agency or department without the consent of the President. Therefore, EPA will select the recipient and administer TAGs at Federal facilities. While Department of Defense Restoration Advisory Boards (RABs) and Site-Specific Advisory Boards (SSABs) at Department of Energy sites are not eligible for TAGs because they include representatives of responsible parties, community members of a RAB or SSAB at a Federal facility site can form a separate subgroup for the purpose of applying for a TAG.

Although EPA funds TAGs at Federal facilities, the Federal facility still has an important role to play. EPA will notify the Federal facility when it receives a letter of intent (LOI) from a group interested in applying for a TAG at a Federal-facility site. The Federal facility then has two options: (1) to provide the regional office with site mailing lists, including local newspapers, as well as information on the various groups in the community so that EPA can begin the notification process; or (2) to conduct the notification in coordination with EPA. Because the project officer for TAGs at Federal facilities will be EPA personnel, EPA will review reimbursement requests, financial statements, and progress reports for consistency with the recipient's statement of work. EPA may have to consult with the Federal facility to verify the information in recipient reports. As part of its ongoing




community involvement activities, the Federal facility must provide site information and documents and interact with TAG recipients and their technical advisors. However, EPA regional personnel should be alerted to issues and problems associated with document availability and should be prepared to ensure that TAG recipients have access to all site documents to which they are entitled.

Sites Delisted From the NPL: Special steps must be taken when a site at which a TAG has been awarded is delisted from the NPL. Because sites are eligible for TAG funding only if listed or proposed for listing on the NPL, the award official must issue a stop-work order as soon as delisting is approved if the TAG has not already expired. Once a stop-work order has been issued, the TAG recipient may use the remaining funds only to fulfill outstanding contractual obligations to technical advisors as specified in subagreements, and must reduce outstanding commitments. The recipient also must report uncommitted funds in its final financial status report.

Sites with Subsequent Non-Concurrent TAG Recipients: The statutory language authorizing the TAG program states that "not more than one grant may be made with respect to a single facility, at all stages of remedial action." In the administration of the TAG program, EPA has interpreted this provision to mean that there can be only one TAG recipient at a site at one time during the Superfund process. To end the availability of technical assistance when an initial award is terminated would penalize the affected community by depriving it of the benefit of technical assistance throughout all stages of the response action. EPA does not believe Congress intended such a punitive result, particularly since it would undermine the purpose of Section 117 of CERCLA—to promote public participation at Superfund sites. Rather, EPA believes that Section 117(e) is intended to limit to one the number of TAG recipients at any given time at a single site. Because of this legal interpretation, EPA allows changes in TAG recipients if the original TAG is terminated.

A subsequent recipient can be funded initially only for the residual amount from the first TAG recipient. Sometimes, it may be necessary to award a TAG of less than \$50,000 to the subsequent recipient, or to process a waiver if funding for the new recipient would bring overall site TAG funding to over \$50,000. These administrative steps are necessary to ensure consistency with the rationale allowing subsequent, non-concurrent TAG recipients at a site. Also, in cases where there is residual funding remaining from a previous recipient, regional TAG personnel should exercise their professional judgment when considering whether the site merits funding beyond the residual amount. Such decisions should be well-documented in EPA files. TAG funds may not be transferred from one recipient to another. The first TAG must be closed out before a subsequent award can be made by reobligating the funds and awarding the TAG to a new recipient. EPA uses the same

EPA or the lead agency should inform the community periodically about the availability of a TAG at sites where there is no active TAG. This periodic notification is important because it helps ensure communities have access to TAGs throughout the cleanup process. Whenever community notification or another event leads to new interest in a TAG, the award process begins again and proceeds as described in Chapter 6 of this guidance.



process for awarding a TAG to a subsequent recipient as it uses when awarding an initial TAG (public advertisement of TAG availability). However, be sure to close out the first TAG before readvertising or notifying the community of the availability of a TAG to a qualified subsequent group.

Chapter 5: Eligibility



This chapter describes eligibility requirements for TAG applicants and recipients.

5.1 Eligibility/Ineligibility

A community group is *eligible* to receive a TAG if it:

- Is comprised of people who are affected by a Superfund site that is on or proposed for the NPL under the National Contingency Plan (NCP) where a response action under CERCLA has begun;
- Meets the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating it has or will have reliable procedures for record keeping and financial accountability related to managing the TAG (the procedures must be in place before the group incurs any expenses); The *Superfund TAG Citizen's Handbook* outlines what a TAG group can do to meet minimum requirements for financial management and record keeping. (Also see the discussion of Administrative and Management Capability in section 6.8 of this guidance.)
- Is incorporated as a non-profit organization and does not engage in lobbying activities (organizations with tax-exempt status under Section 501(c)(4) of the Internal Revenue Code, which engage in lobbying activities, are not eligible for TAGs); and
- Is not ineligible according to 40 CFR 35.4020(b)(1-6), as listed below.

A community group is *ineligible* to receive a TAG if it is:

- A PRP, receives money or services from a PRP, or represents a PRP;
- Not willing to incorporate as a non-profit organization for the specific purpose of representing affected people except as provided in Section 35.4045 of the October 2000 final rule. This rule indicates that a group that was previously incorporated as a non-profit organization and includes all individuals and groups who joined in applying for the TAG is not required to reincorporate for the specific purpose of representing affected individuals at the site, if in EPA's discretionary judgment, the group has a history of involvement at the site;
- "Affiliated" with a national organization, which in this context means that a national organization has the power to control the TAG group or another, third group controls or has the power to control both. (Factors indicating control include interlocking management or ownership [e.g., centralized decision making and control], shared facilities and equipment, and common use of employees);
- An academic institution;
- A political subdivision (for example, a township, a Tribal government, or a city); or
- Established or presently sustained by ineligible entities described above.

Identifying Ineligible Parties Within the Organization: EPA believes that TAGs should be available to all interested groups as long as members in the group are participating as affected individuals and not as representatives of ineligible entities. It is EPA's prerogative to deem ineligible an individual who EPA believes has a significant financial involvement in a PRP, even if that individual is not participating in the group as a PRP representative.

Elected officials who have received political contributions from PRPs and are members of TAG organizations should be considered ineligible participants in those organizations. PRP employees, however, should not be considered ineligible participants in most instances if the employees are participating as affected individuals and do not have a significant or controlling interest in a PRP.



5.2 How a Group Can Become Eligible If Currently Ineligible

An ineligible group can become eligible by establishing an identity separate from that of the PRP or other ineligible entity or by making a reasonable demonstration of independence from the ineligible entity. At a minimum, this requires that the group have a separate and distinct formal legal identity from the ineligible entity (different officers and board of directors) and a substantive existence (is not affiliated with the ineligible entity, and has its own finances in place).

In determining if a group has a different substantive existence from the ineligible entity, the group must prove that it is not controlled either directly or indirectly by the ineligible entity. Conversely, the group cannot control, either directly or indirectly, an ineligible entity and must prove to EPA that a third party does not have the power to control the applicant group and an ineligible entity. A private citizen who belongs to an ineligible entity may participate in a group that receives a TAG, but he or she may not represent the interests of the ineligible entity in the TAG group.

While DoD RABs and SSABs at DOE sites are not eligible for TAGs because they include representatives of responsible parties, community members of a RAB or SSAB at a Federal facility site can form a separate subgroup for the purpose of applying for a TAG. Community Advisory Groups (CAGs) at Superfund sites are eligible for TAGs if their membership does not include representatives of ineligible entities, or if they form a subgroup that meets eligibility criteria for TAGs.

5.3 Encouraging Consolidation of Groups

Section 117(e)(2) of CERCLA, as amended, states that "[n]ot more than one grant may be made under this subsection with respect to a single facility ..." As a result, only one group at a time can receive a TAG for any one NPL site, although a variety of groups may apply. At sites where there are several groups interested in applying for a TAG, EPA staff must ensure that all interested groups are afforded equal opportunity and treatment.

While EPA does not require consolidation, staff should strongly encourage groups to consolidate and submit only one application whenever there are competing groups for the single available TAG. EPA staff should stress to potential applicants that their chances of receiving a TAG will be greatly improved if they involve in their project a broad range of groups affected by the site. In addition, consolidation eases EPA's administrative burden by reducing the need to review multiple applications. Generally, it is the responsibility of the groups to form their own coalition and coordinate the completion and submittal of their application.

Community groups have found many ways to coalesce for the purpose of applying for and administering a TAG. For example, community groups at one Superfund site formed a new entity comprised of representatives from each of the organizations to apply for and administer a TAG. In another case, community groups formed a coalition and designated one of the member organizations as the "fiscal agent" to administer the TAG for the coalition.



Under certain circumstances, for example, at sites that affect more than one State or region, and where multiple citizen's groups are interested in a TAG for the same site, the RPM or CIC should consider conducting public meetings and arranging for facilitation services to assist groups in consolidating. Facilitation services are available through the Superfund program's Alternative Dispute Resolution (ADR) contract to assist groups in consolidating. Offering such groups the services of a facilitator may help them explore the pros and cons of consolidation. Facilitation also may help to bring the groups together to achieve broader public representation.

5.4 Incorporation

As outlined in Chapter 8 of this guidance, Section 35.4045 of the October 2000 final rule requires all TAG recipients to incorporate as non-profit corporations for the purpose of participating in decision making at the Superfund site for which a TAG is provided. However, if a group has previously incorporated as a non-profit organization and includes all of the individuals and groups who joined in applying for the TAG, it is not required to reincorporate for the specific purpose of representing the affected individuals at the site.


If an applicant group has previously incorporated, but not specifically for addressing issues at a Superfund site, it must demonstrate a history of involvement at the site. A group can demonstrate a history of involvement in several ways, including: documenting that members of the group have attended public meetings regarding the site or providing copies of agendas showing that the applicant group had held its own meeting(s) emphasizing site issues. EPA, however, retains full discretion to make a determination regarding an applicant's history of involvement at a site.

In many cases, the applicant groups will find it necessary or practical to incorporate specifically for the TAG program. The obvious case includes a situation where individuals have consolidated as an applicant group. Another situation might exist where several pre-existing incorporated non-profit groups representing affected individuals at the site consolidate to form one applicant group. In both cases, it is practical and necessary for those applicant groups to incorporate specifically for the purposes of the TAG.

At the time of the TAG award, an applicant must demonstrate that the group has incorporated as a non-profit corporation or filed the necessary documents for incorporation with the appropriate State agency. Necessary and reasonable incorporation costs will be considered an eligible pre-award cost. They may be charged to the TAG or counted toward the matching funds requirement as outlined in Section 35.4100(b) of the October 2000 final rule. EPA cannot sign the grant award unless the group demonstrates that it has filed the necessary documents for incorporation with the appropriate State agency.

On or before the date that the first request for reimbursement is filed, the recipient must submit documentation (a copy of its incorporation document or a letter from the State) showing that the group has been officially incorporated by the State. If such documentation is absent, EPA will not reimburse the TAG recipient for the requested funds and may annul the TAG.

The incorporation requirement exists because it benefits both EPA and TAG recipients and does so at relatively little cost to both. Incorporation protects individual group members from potentially serious personal liability problems that may result if the TAG is awarded to a group or organization that is not incorporated. It also reduces or eliminates problems that might otherwise arise from the departure of any individual from the recipient group, if it lacked the structure created by incorporation. EPA also benefits from awarding every grant to a group with the same legal status: a corporation with bylaws, officers, and official purposes.



An applicant who wishes to do so also may apply for tax-exempt status from the U.S. Internal Revenue Service (IRS). Tax-exempt status allows a non-profit corporation to receive tax-deductible donations and may provide other benefits to the group, depending on State law. (See Chapter 8 of this guidance.) However, if a group has tax-exempt status under Section 501(c)(4) of the Internal Revenue Code and is engaged in lobbying activities of any kind, it is ineligible to receive Federal funding. Costs for obtaining tax-exempt status are not eligible pre-award costs. TAG recipients may be reimbursed for the costs of obtaining tax-exempt status, but only if these costs are incurred after the group receives its TAG. (See also the *TAG Program Fact Sheet on Incorporation and Tax-Exempt Status*, included in Resource Section C.)

Chapter 6: The TAG Application Process



This chapter outlines the steps in the TAG application process, and procedures for processing applications and awarding TAGs.


6.1 Processing Letters of Intent (LOIs)

All citizens' groups interested in applying for a TAG should first submit an LOI to EPA. The LOI should identify the name of the group, state that the group intends to apply for a TAG, specify the Superfund site for which the group would like to apply, and provide the name and telephone number of a contact person in the group. The EPA project officer/regional TAG coordinator should contact the group to get further information necessary to determine whether the group is likely to be eligible for a TAG.

When EPA receives a LOI from a group at an eligible site, EPA must begin the formal 30-day community notice process. This process gives other potentially interested groups an opportunity to submit an LOI or to form a coalition with the group that submitted the LOI so a single application may be submitted to EPA. If another group is interested in a TAG and is unable to form a coalition with the group that submitted the original LOI, that group must submit its own LOI to EPA during the 30-day community notification period. After the 30-day notification period expires, another 30-day period begins. During this period, EPA will accept separate TAG applications only from interested groups who previously filed LOIs. In such cases, EPA must notify all applicants that other groups intend to file applications, and indicate that applicants will be given 30 days for the submission of a TAG application.

The following steps are suggested for processing LOIs. (These steps can be modified to meet the specific needs of a region):

1. LOI to file a TAG application is received and processed by the GMO.
2. EPA project officer/regional TAG coordinator is assigned, if not already designated.
3. The EPA project officer/regional TAG coordinator circulates a copy of the LOI to the RPM, the CIC, and other interested parties for the site. If the LOI proposes use of TAG funds to hire a technical advisor to consider public health issues, the EPA project officer/Regional TAG coordinator informs the Agency for Toxic Substances and Disease Registry (ATSDR) Regional Point of Contact. The RPM notifies the EPA project officer/regional TAG coordinator as to whether a response action is underway at the site or whether action will begin in the next fiscal year, as indicated by EPA's annual *Superfund Comprehensive Accomplishments Plan (SCAP)*.
4. The GMO and the EPA project officer/regional TAG coordinator each establish files for the site.
5. If a response action is not underway or scheduled to begin, the EPA project officer/regional TAG coordinator should notify the applicant within 30 days of receiving the LOI that a TAG award is not anticipated in the near future. Whenever possible, the notification should indicate to the applicant the approximate timing for submission of an application. Community involvement staff should ensure that the applicant is added to the site mailing list.
6. If a response action has begun or is scheduled to begin (as indicated by the SCAP), the EPA project officer/regional TAG coordinator or CIC will publish a notice announcing the receipt of the initial LOI. Regions may want to do additional community involvement efforts to notify other potential applicants that they have the opportunity to form a coalition with the first group or to submit an LOI.
7. If other citizens' groups indicate an interest in applying for a TAG during the 30-day community notification period, the other groups should be instructed to contact the group that submitted the original LOI within the 30-day period to try to form a coalition to submit a single TAG application.

- 
8. At the close of the 30-day formal notice period, if no other citizens' groups have indicated an interest in applying for a TAG, the sole potential applicant group should be contacted to file an application with the appropriate regional contact. It has 30 days in which to file an application. The group may request a filing extension to give it an additional 30 days, if necessary.
 9. If additional groups express interest in applying for the TAG during the 30-day formal notice period but cannot form a coalition, EPA will provide an additional 30-day period for all groups to file separate applications.

There may be instances where EPA receives a completed application without a preceding LOI. Although EPA should strongly discourage this practice, EPA staff should consider the application in place of an LOI and follow the same notification procedures. However, the applicant need not submit another application at the close of the 30-day period unless it chooses to coalesce with another citizens' group as a result of the notification process. If a coalition is formed, the initial applicant group should be directed to modify and resubmit its application.

6.2 Requests For Application Filing Extensions

Extensions for filing an application may be requested during the 30-day period that starts after the community notification period and are granted at EPA's discretion. All requests should justify the need for such an extension. The EPA project officer/regional TAG coordinator should consider the applicant's justification and the circumstances surrounding the need for an extension and consult with the TAG review team before approving one. Extensions should be granted for a period not to exceed 30 days.

Application filing extensions may be justified in situations where:

- Consolidation efforts are progressing slowly due to the involvement of a significant number of affected groups and individuals with widely divergent perspectives;
- Applicants believe the lead agency, whether EPA or the State, has not conducted adequate or timely notification efforts; or
- Applicants can substantiate they were not provided adequate or timely information by EPA or the state which was needed to complete the application.

If there are multiple applications, the EPA project officer/regional TAG coordinator should notify all other applicants that an application filing extension has been granted for all of them and that an award decision will be delayed. However, the schedule for response actions at a site will not be affected by the TAG application process. Documentation of this communication should be placed in the file.

6.3 Prioritizing LOIs

Sometimes regions may need to prioritize LOIs to ensure that communities with the most immediate need for technical assistance have access to TAG monies as quickly as possible. Every effort should be made to ensure that TAG awards are made in sufficient time for groups to obtain a technical advisor by the start of the RI/FS. Regions should process LOIs in the following order:

1. Sites where RI/FS work is underway, but prior to issuance of the ROD at the last operable unit;
2. Sites where the RI/FS work plan has been developed and/or the RI/FS has begun, but a ROD is at least six months away;



3. Sites where an RI/FS is scheduled to begin within the next six months;
4. Sites where an RI/FS is scheduled to begin within the next fiscal year;
5. Sites where the funds for the RI/FS have been obligated but no work has begun at the site; and
6. Sites where design, construction, or operation and maintenance are underway.

When funds are limited, regions may have to set priorities among sites where TAGs will be awarded. Factors to consider when ranking sites are:

- Risk to citizens' health or welfare posed by the site;
- Whether a site is in the pre-ROD stage in the Superfund cleanup process;
- History of public involvement at the site; and
- Threat to the environment posed by the site.

6.4 Application Requirements


The *Superfund Technical Assistance Grant (TAG) Citizen's Handbook* contains detailed instructions explaining the proper procedures for completing a TAG application. EPA personnel should familiarize themselves with the instructions provided to citizens.

Applicants for TAGs must submit the following materials in accordance with Sections 35.4045, 35.4135, 35.4140, 35.4145 and 35.4150 of the October 2000 final rule:


- An original and one copy of EPA SF-424, Application for Federal Assistance (with original signature of the group's authorized representative), or those forms required by 40 CFR Part 30 and instructions provided by EPA (contact the regional grants office for this information);
- A budget showing the proposed funding period and expenditure of funds; how the funds and other resources, including the required 20 percent match, will be used to complete the project for the project funding period; and how budget figures were derived;
- A statement of work that adheres to the site's technical and health-related work plans and any other related work plans for the site. The statement of work also should include a list of deliverables and the schedule for the recipient to send to the TAG project officer;
- Assurances, certifications, and any other pre-award paperwork as required under 40 CFR Part 30 (Contact the regional grants office for this information); and
- A project narrative statement that includes the applicant's responsibility requirements, the group's issues/objectives and the technical advisor's statement of work with a listing of the deliverables.

The project narrative statement is critical for assessing a group's eligibility and grant management capabilities. This section of the TAG application is particularly important in determining an award when there are several competing applications. (See discussion of evaluation criteria in Sections 6.8 and 6.9.)

The extent to which EPA staff assists groups in completing applications is left to the discretion of each region. To avoid the appearance of favoritism to any group, regions are advised to provide the same level of assistance to all groups competing for a single application. For example, a region



may want to hold a workshop on the application process for all interested parties in the beginning of the second 30-day filing period. Such a workshop would ensure all applicants receive the same information and have an equal chance of completing a successful application.



EPA project officers/regional TAG coordinators should work closely with applicants to help them develop a well-thought-out statement of work for their TAG based on careful analysis of the proposed cleanup schedule and anticipated site activities. This information is particularly important for developing a realistic funding period for the TAG.

6.5 Determining the Funding Period

It is up to each region to determine an appropriate funding period for each TAG. As a general rule, funding periods should be for not less than two years. The funding period for an initial TAG should be based on the timeframe in which the applicant proposes expenditure of the initial \$50,000 (or whatever amount has been requested). Funding periods for subsequent awards should be based on the workplan presented for expenditure of the requested amount. At the end of a funding period, a continuation grant (with a new scope of work, proposed budget, and budget/funding period) can be processed for the next phase of the site's technical assistance project. Regions should make it clear to applicants/recipients that by agreeing to a particular funding period and proposed budget, EPA is not obligating funds. Actual funding is contingent upon budget constraints, and TAG recipients must demonstrate responsible financial management of their TAG to be eligible for additional funding after the initial \$50,000.

6.6 Application Review and Award

EPA must review all TAG applications to determine the relevance of the proposal to EPA program objectives. Reviews must be consistent with applicable regulations and established EPA criteria. Reviewers of TAG applications must determine that applicants meet the responsibility requirements and evaluation criteria established in the October 2000 final rule for the TAG program and further outlined in the *Superfund Technical Assistance (TAG) Citizen's Handbook*. EPA must ensure that any proposed TAG agreement meets the requirements of 40 CFR Part 30 and the regulations for the TAG program, 40 CFR Part 35, Subpart M.

Application Review Process and Time Line: Regions should note that Congress has instructed EPA "to act expeditiously" in making TAG awards. Regions should act promptly to inform TAG recipients of any action taken on their applications or of a decision to delay action until a response action is scheduled to begin or is underway at a site. A decision to award a TAG cannot be made until an application is complete. To be complete, the application must go through the intergovernmental review process (See page 21), if required.

When a region receives a TAG application that is incomplete or needs extensive corrections or revisions, the EPA project officer/regional TAG coordinator must notify the applicant in writing of the application's deficiencies. The applicant has 90 days from the date of the EPA letter outlining the application's deficiencies to correct or change the application and return it to the EPA project officer/regional coordinator. If the applicant fails to return the application before the 90-day deadline, the application becomes null and void. The EPA project officer/regional TAG coordinator should send a letter to the applicant group informing it that the application is no longer valid and that the TAG will not be awarded for the current application. The original applicant may resubmit its application after the 90-



day period has expired. EPA will then readvertise TAG availability, and the award process will begin again. If EPA responds with a second comment letter, the applicant has 90 days from the date of that letter in which to respond. Once an application is complete, the project officer's recommendation to award a TAG should be made within 30 days.

Intergovernmental Review (IGR) Process: Most Federal grants are subject to the IGR process. The State or other reviewing agency has 60 days to review each application, at which time it must forward its comments on the application to the regional GMO. As a courtesy to applicants, EPA project officers/regional TAG coordinators should tell them whether or not their applications must be submitted to the State or other reviewing agency for consideration. (See discussion of "Obtaining Intergovernmental Review of TAG Applications" in Section 8.1 of this guidance).

Regional TAG Teams: A regional TAG review team should be designated and convened to review and assess TAG applications and to make awards. The composition of the review team will vary, depending on the regional staffing levels and priorities, but usually includes the:

- EPA project officer/regional TAG coordinator;
- Grants specialist;
- RPM for the site, or ORC if legal or enforcement issues are involved;
- CIC for the site; and
- On Scene Coordinator (OSC), when long-term removal activities are anticipated at the site.

Regional TAG review teams considering applications that propose using TAG funds to hire a technical advisor to consider public health issues also may include as a member the ATSDR Regional Point of Contact. (Also see the *Agency for Toxic Substances and Disease Registry's Guidance for Participating in the U.S. EPA's Technical Assistance Grant Program*, included in Resource Section D. This guidance describes coordination between EPA and ATSDR for TAGs that include technical assistance for public health issues.)

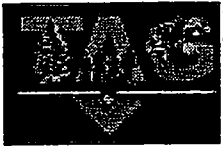
Steps in the TAG Application Review Process: The following are steps in the EPA grant award process, with additional steps added specifically for the TAG program. Major steps are discussed in detail in the remaining sections of this chapter. Exhibit 6-1 illustrates the overall process. Each step on the flow chart is numbered and explained:

1. The application is received by the regional GMO; an EPA Assistance Identification Number and program code number are assigned to the application. The region determines that funds are available. In doing so, the team should identify the appropriate source of funds (site-specific special account or appropriated Superfund account).
2. The EPA project officer/regional TAG coordinator is assigned if he/she has not yet been designated. Official project files are created if they have not yet been established. These files include the official:

Assistance file maintained by the GMO for each application. This file contains documents providing EPA's funding or rejection decision, principal operating activities, and required financial reporting through project completion, closeout, and audit;

Technical project file maintained by the sponsoring office/TAG project officer. This file is a record of activities conducted under the TAG, including progress reports; and,

Financial file maintained by the FMO. The FMO establishes, maintains, and retires the official financial records for an assistance agreement.



The GMO enters information into the EPA Grants Information and Control System (GICS) for tracking the application throughout the review process in accordance with the GICS Manual.

3. EPA acknowledges receipt of the application.
4. The regional TAG review team reviews the application, which includes checking that the application is complete. If the application is incomplete or has deficiencies, the EPA project officer/regional TAG coordinator should notify the applicant and detail the application's deficiencies. The applicant has 90 days from the date of the EPA letter outlining the application's deficiencies to correct or change the application and return it to the EPA project officer/regional TAG coordinator.
5. The regional TAG review team does the programmatic or technical review to determine if an award should be recommended, and, in the case of competing applicants, which, if any, application should be recommended for approval.
6. If an application is not awardable (in cases where the applicant is determined to be ineligible for a TAG), the EPA project officer/regional TAG coordinator sends a letter of rejection to the applicant outlining the reasons for rejection and sends a copy of the letter to the GMO. The GMO notifies GICS of the rejection and closes out the official administrative file. (In most cases, however, the EPA project officer/regional TAG coordinator works with potential applicants from the time of their initial inquiry about the TAG program, so groups that are ineligible for TAGs generally do not submit full applications.)
7. If the application is approved, the regional TAG review team sends a funding recommendation to the GMO. Under no circumstances should the program staff notify the applicant of award approval.
8. The GMO then forwards a commitment notice to the FMO for entry into the financial management system. The award notification also is transmitted to Headquarters GAD.
9. If the applicant receives administrative and programmatic approval for funding, a grant agreement (EPA Form 5700-20A) is prepared and signed by the award official. Upon signature, the document becomes an offer from EPA to the applicant and obligates committed funds. Award offers are not mailed to the recipient until five working days after the award official signs the agreement. (This restriction does not apply to rejections, decreases, or withdrawal actions). During this five-day period, various internal EPA offices (the Headquarters OCL, regional OCL, Headquarters GAD, the OGC, and the EPA Administrator) must be notified of the award before any person outside the Federal government is informed of the decision.
10. The GMO must enter award information into GICS within one working day following signature by the award official. The Headquarters OCL receives award notifications from GICS and notifies the appropriate Congressional delegation prior to notification of the recipient.
11. At the end of the five-day waiting period, the GMO mails the original and one copy of the TAG agreement to the applicant for signature. The applicant must either sign and return the agreement within three weeks of the date the agreement is postmarked or request an extension; otherwise the application is void.

6.7 Application Review System

This section provides checklists for reviewers to use in evaluating applications using a two-tiered scoring system. During the first tier of review, reviewers must determine that an applicant meets the minimum administrative/management requirements outlined in the October 2000 final TAG rule. The Tier Two review is designed to ensure that the applicant meets the statutory and regulatory requirements for an affected group and that the group can make effective use of a TAG.



Regions are encouraged to complete both tiers of review before an application is approved or rejected. While some regions complete both tiers of the review as part of the evaluation process for every application, others conduct the Tier Two review only in instances where more than one application is received for a single TAG.

Evaluation of a Single Application or Competing Applications for a Site: When a single application is submitted, reviewers must be particularly concerned with determining whether or not the applicant qualifies as an affected group, can adequately manage a TAG, and satisfies the requirements of the TAG program. Tier One review should be conducted before any application is approved or rejected. A single application that does not meet minimum requirements in the Tier One review can be rejected outright or sent back to the applicant for revision.

While it is up to each region whether or not to conduct the Tier Two review when a single application is received for a site, the Tier Two scoring system always should be used when competing applications for a single award are received. The Tier Two review must be completed for each application to enable a comparative evaluation of competing applications. This comparative evaluation is a significant factor in determining the most qualified applicant.

6.8 Tier One Review

Assessing an Applicant's Eligibility: The first step in reviewing an application is to determine if the applicant is *ineligible* to receive a TAG, as stated in Section 35.4020 of the October 2000 final rule and Chapter 5 of this guidance.

A community group is *eligible* to receive a TAG if it:

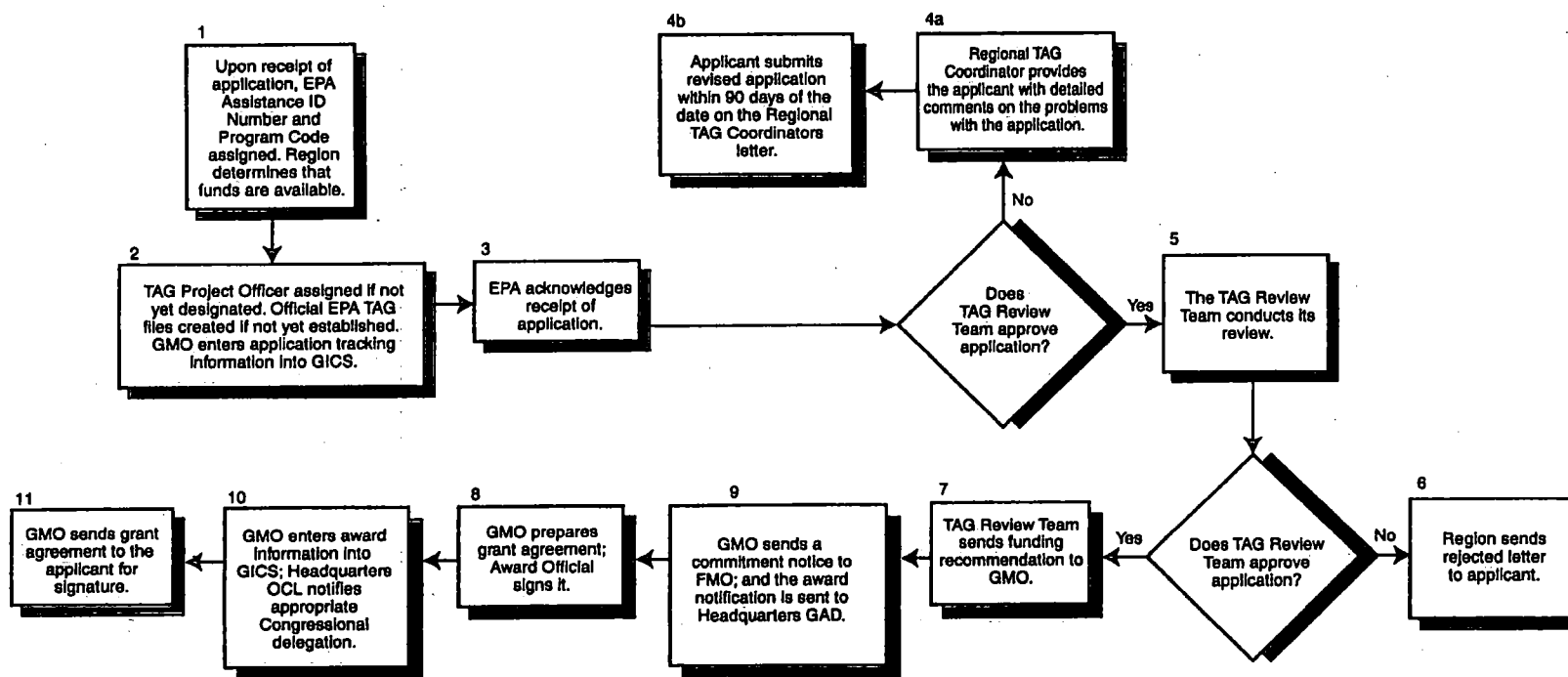
- Is comprised of people who are affected by any site that is on or proposed for the NPL under the NCP where a response action under CERCLA has begun;
- Meets the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating it has or will have reliable procedures for record keeping and financial accountability related to managing the TAG (the procedures must be in place before the group incurs any expenses);
- Is incorporated as a non-profit organization and does not engage in lobbying activities (organizations with tax-exempt status under Section 501(c)(4) of the Internal Revenue Code, which engage in lobbying activities, are not eligible for TAGs); and
- Is not ineligible according to 40 CFR 35.4020(b)(1-6), as listed below.

A community group is *ineligible* to receive a TAG if it is:

- A PRP, receives money or services from a PRP, or represents a PRP;
- Not willing to incorporate as a non-profit organization for the specific purpose of representing affected people except as provided in Section 35.4045 of the October 2000 final rule, which indicates that a group that was previously incorporated as a non-profit organization and includes all individuals and groups who joined in applying for the TAG is not required to reincorporate for the specific purpose of representing affected individuals at the site, if in EPA's discretionary judgment, the group has a history of involvement at the site;
- "Affiliated" with a national organization, which in this context means that a national organization has the power to control the TAG group or another, third group controls or has the power to control both. (Factors indicating control include, but are not limited to: interlocking management or ownership [e.g., centralized decision making and control]; shared facilities and equipment; and common use of employees);



Exhibit 6-1 Steps in the Application Review and Award Process



GMO = Grants Management Office
 GICS = Grants Information and Control System
 GAD = Grants Administration Division
 OCL = Office of Congressional Liaison
 FMO = Financial Management Office



- An academic institution;
- A political subdivision (for example, a township, a Tribal government, or a city); or
- Established or presently sustained by ineligible entities described above.

Within these categories, there are some exceptions that should be considered. Examples include:

- An individual member of an ineligible group is *not* precluded from participating as a member of an applicant and/or recipient group when acting solely in his or her capacity as an affected individual. (See Section 5.1 of this guidance.)
- Citizens' groups that are established and funded by government entities and have elected officials as members are ineligible. However, some citizens' groups that organized themselves and were later reorganized by a government entity as a representative body of the community, but are not supported by that or any other governmental entity, should be considered eligible for a TAG.
- Questions regarding the eligibility of innocent landowners who are classified as PRPs should be directed to the appropriate EPA ORC. Under Section 107(a) of CERCLA, as amended, landowners are subject to liability. However, CERCLA, as amended, provides a defense for innocent landowners (See CERCLA Sections 107(b) and 101(35),) and for *de minimus* settlements (See CERCLA Section 122(g)(1)(B)). Determinations are dependent upon the facts of each case.

Administrative and Management Capability: Reviewers next must determine whether an applicant has the capability to adequately manage a TAG, as mandated under Section 35.4020, which states that a community group must meet the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating that it has or will have in place prior to incurring any expenses, reliable procedures for record keeping and financial accountability related to managing a TAG. Additionally, to receive TAG funds, an applicant must be incorporated as a non-profit corporation for the purpose of addressing the Superfund site for which the TAG is provided, except as described in Section 8.2 of this guidance. Briefly, that section makes an exception for previously incorporated non-profit groups that include all of the individuals and groups who joined in applying for the TAG. Groups that meet this exception need to demonstrate a history of involvement at the site.

An applicant must demonstrate that the group has developed a sound plan for managing its technical advisor, including establishment of reliable procedures for record keeping and maintaining financial accountability in accordance with 40 CFR 30.21. TAGs can be awarded only to groups that have the ability to meet the following criteria in 40 CFR 30.21:

- Financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the project, or a demonstrated ability to obtain these;
- Resources to meet the project completion schedule contained in the assistance agreement;
- A satisfactory performance record for completion of projects and subagreements or an organizational structure that indicates the recipient's ability to complete projects and award subagreements;
- Accounting and auditing procedures adequate to control property, funds, and assets, as required in 40 CFR Part 30, Subpart E;
- Procurement standards that comply with 40 CFR Part 30;
- Property management systems for acquiring, maintaining, safeguarding, and disposing of property, as required under 40 CFR Part 30, Subpart E; and



- Demonstrated compliance or willingness to certify that it will comply with the civil rights, equal employment opportunity, labor law, and other statutory requirements under 40 CFR Part 30, Subpart F.

The purpose of these requirements is to ensure that groups applying for TAGs have established reliable procedures for managing a TAG and guiding their technical assistance project. Few, if any, groups will have had previous experience managing an EPA grant or a project of this type. As a result, reviewers will have to evaluate a group's ability to manage a TAG based on minimal information.

The October 2000 final TAG rule requires groups to supply, as part of their application, a narrative statement explaining how they plan to meet the responsibility requirements. Applicants are not required to provide supporting documentation, but EPA project officers/regional TAG coordinators should remind groups that, in case of an audit, they must be able to document any statements they have made in their applications. The sample application shown in the *The Superfund TAG Citizen's Handbook* shows the information EPA expects an applicant to provide to meet these requirements.

In addition to the narrative statement, reviewers also should examine a group's entire application within the context of 40 CFR 30.21. The statement of work and budget sections of the application, in particular, can provide indications of a group's management capabilities. A group that has produced a sound plan for using the technical advisor with clear objectives and a well-developed budget is demonstrating its capability to manage a project of this type and indicating that it is likely to control government grant monies responsibly.

Incorporation Responsibility: Section 35.4045 of the October 2000 final rule states that to be eligible to receive a TAG, a group must incorporate as a non-profit organization for the purpose of participating in decision making at the Superfund site for which EPA provides a TAG. This includes groups that formed out of a coalition agreement. However, an applicant group that was previously incorporated as a non-profit organization may qualify for a TAG under certain circumstances. (See Section 8.2 of this guidance for additional information.)

Responsibility Requirements Checklist: Exhibit 6-2 provides a checklist to assist reviewers in assessing a group's compliance with the responsibility requirements. Each of the requirements in 40 CFR 30.301, with the addition of incorporation, is listed, followed by relevant questions that reviewers might consider while scoring an application.

6.9 Tier Two Review

Evaluation Criteria: The October 2000 final TAG rule simplifies criteria for evaluating TAG applications and assigns an equal weight to each. Evaluators will use a five-point scale to indicate the extent to which an applicant meets each criterion:

Value	Description
0	Not addressed or totally deficient
1	Poor
2	Fair
3	Good
4	Excellent

The following criteria are included in the Tier Two review:

1. The applicant represents groups and individuals affected by the site.



The applicant must indicate the extent to which the group represents affected citizens, and explain how the group plans to involve other affected individuals and groups in the community interested in joining the coalition after the TAG has been awarded. For example, a group that shows that it has had significant involvement at the site for a long time, and which is a coalition of groups might be awarded a score of four. Conversely, a group of individuals with no history of involvement with the site and no stated intention to try to involve others might receive a score of one or zero.

2. The identification of how the group plans to use the services of a technical advisor throughout the Superfund cleanup process.

Applicants must document how the group plans to use the technical advisor. Applicants also must submit a schedule for having the technical advisor complete certain tasks. If there are competing applications, reviewers should award a higher score to the applicant that presents the most complete, effective, and efficient plan for using TAG funds. An applicant who is unable to identify a significant or substantial need for technical assistance, or who presents an incomplete schedule or poorly thought-out plan for using the technical advisor should receive a low score.

This criterion may be the most difficult for applicants to address, particularly for groups that are unfamiliar with the Superfund process. The *Superfund TAG Citizen's Handbook* includes a chapter on the Superfund process that highlights opportunities for using a technical advisor. Groups having difficulty addressing this criterion should be advised to refer to this chapter of the *Handbook* and to work closely with their RPM.

3. The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the technical advisor.

Applicants must include in the application an outline of the activities that the group plans to use to inform other interested community members about the site. An application that presents a clear plan for disseminating information through meetings, publications, press releases, or by other means to the broader community should receive a higher score than one that indicates little ability or willingness to share information with others outside the group.

Exhibit 6-3 provides a score sheet for the Tier Two review. To compare competing applications, a checklist of questions are provided for each criterion. Hypothetical examples are provided for illustrative purposes only and should not be construed as definitive.

6.10 Matching Share Requirement

TAG applicants are required to contribute 20 percent of the total costs of the TAG project unless EPA waives the match under Section 35.4055 of the October 2000 final rule. For example, if the TAG group receives \$50,000 in Federal funds, the matching share is \$12,500, which is 20 percent of the total project costs of \$62,500. The matching share requirement is a statutory one. (Also see the discussion of "Waivers to the 20 Percent Matching Share Requirement" in Section 7.1 of this guidance.)

The recipient must show how it is meeting the match requirement during each budget period by tracking it in reimbursement requests. If the recipient raises more than the 20 percent match in a given reimbursement period, the recipient may carry the excess amount to the next reimbursement period. While applicants are not required to have matching funds in hand at the beginning of each budget period, they must have a plan for raising the funds or providing in-kind contributions. The budget provided in the scope of work, as well as all requests for reimbursement, should indicate the matching funds provided by the group.



Exhibit 6-2

Technical Assistance Grant Application Scoring Form

Tier One Review

Applicant: _____

Site/State: _____

Criteria	Does the Applicant Meet the Criteria Yes/No*
<p>1. Financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the project, or a demonstrated ability to obtain these.</p> <p><u>Guiding Questions:</u></p> <p>A. Does the group have an adequate organizational structure to carry out the project and provide the necessary oversight?</p> <p>B. Does the group identify which officers or members will be responsible for financial oversight of the TAG and for directing the technical advisor?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. Resources to meet the project completion schedule contained in the TAG agreement.</p> <p><u>Guiding Question:</u></p> <p>Does the group adequately describe its plans for raising the matching funds and/or obtaining in-kind contributions?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. An indication of ability to complete projects and subagreements.</p> <p><u>Guiding Question:</u></p> <p>Do the schedule and budget outlined in the application appear adequate for satisfactory completion of the technical assistance project?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>



Criteria	Does the Applicant Meet the Criteria? Yes/No*
<p>4. Accounting and auditing procedures adequate to control property, funds and assets, as required in 40 CFR Part 30, Subpart E.</p> <p><u>Guiding Questions:</u></p> <p>A. Has the group proposed or established procedures for recordkeeping or financial accountability related to management of a TAG?</p> <p>B. Do the costs estimated in the group's proposed budget appear reasonable in relation to the tasks proposed?</p> <p>C. Does the group identify who will maintain the group's financial reports?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>5. Procurement standards comply with 40 CFR Part 30.</p> <p><u>Guiding Question:</u></p> <p>Has the group submitted a procurement certification form?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>6. Property management systems for acquiring, maintaining, safeguarding, and disposing of property, as required in 40 CFR Part 30, Subpart E.</p> <p><u>Guiding Questions:</u></p> <p>A. If the group proposes to acquire property with TAG monies, does it have an adequate property management system in place?</p> <p>B. Are equipment purchases proposed? (These should be discouraged. See 6.10 of this guidance.)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>7. Is the group incorporated or are activities underway to ensure incorporation of the group prior to receipt of the award?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

* To be approved, the applicant must satisfy all seven criteria

Action Taken:

☐ Approved ☐ Disapproved

Evaluated by: _____ Date: _____

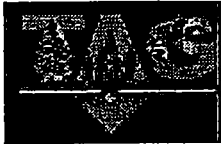


Exhibit 6-3

Technical Assistance Grant Application Scoring Form

Tier Two Review

Applicant: _____

Site/State: _____

Criteria	Score (Circle one)	Justification or Comments
<p>1. Applicant best represents groups and individuals affected by the site.</p> <p><u>Guiding Questions</u></p> <p>A. Does the applicant represent a broad range of concerns expressed by the community related to the site?</p> <p>B. How effectively does the applicant represent the most directly affected individuals?</p> <p>C. Is the applicant willing to involve other community groups or individuals who wish to join the coalition after award of the TAG?</p> <p>D. Has the applicant had past involvement with the site?</p> <p>E. Does the applicant provide a statement substantiating its historical involvement with the site?</p>	0 1 2 3 4	

Rating Definitions:

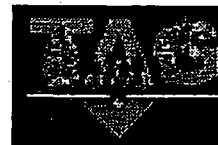
- 0 = Not addressed or totally deficient
- 1 = Poor
- 2 = Fair
- 3 = Good
- 4 = Excellent

Action Taken:

☐ Approved ☐ Disapproved

Evaluated by: _____

Date: _____



Criteria	Score (Circle one)	Justification or Comments
<p>2. The identification of how the group plans to use the services of a technical advisor throughout the Superfund process.</p> <p><u>Guiding Questions:</u></p> <p>A. Does the applicant outline the tasks that need to be performed by the technical advisor?</p> <p>B. Does the applicant have a general understanding of the Superfund process and when technical assistance will be required?</p> <p>C. Does the applicant present clear goals and objectives for its project?</p> <p>D. Does the applicant establish that technical assistance will be needed throughout the Superfund process, from the current point in the remedial process through the remedial action at the site?</p> <p>E. Does the applicant present a schedule that reasonably apportions hours to tasks in the scope of work for efficiently using the services of the technical advisor throughout the Superfund process? (A model distribution of hours usually looks like a bell-shaped curve, with the peak of the curve occurring during the FS.)</p>	0 1 2 3 4	
<p>3. The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the technical advisor.</p> <p><u>Guiding Questions:</u></p> <p>A. Does the applicant plan to have a newsletter, web site, or other means for publishing the technical advisor's findings?</p> <p>B. Does the applicant plan to issue mailings?</p> <p>C. Does the applicant plan to hold meetings where the technical advisor will be available to the general public rather than just to members of the TAG group?</p>	0 1 2 3 4	



Without specific statutory authority, TAG recipients may not use other Federal funds to meet the matching funds requirement. In addition, TAG recipients may not apply the same funds used to meet the TAG match requirements to other Federal program matching requirements. Recipients may, however, use funds from a State or municipality to meet the matching funds requirement as long as the funds are given strictly for this purpose with "no strings attached." Except in the case of the incorporation costs and the \$5,000 advance payment for necessary start-up activities, recipients may not be reimbursed for or count the costs of goods or services purchased prior to the award of the TAG toward the match requirement. Because incorporation is required of all recipients before a TAG can be awarded, necessary and reasonable costs associated with incorporation, if incurred for the sole and specific purpose of this matching funds requirement, may be charged to the TAG or counted toward the matching funds requirement.

In-Kind Contributions: TAG recipients may use "in-kind contributions" to meet the matching funds requirement, thereby reducing the amount of cash they must raise. In-kind contributions are non-cash donations by recipients and non-Federal public or private third parties. In-kind contributions must be used exclusively for a single project (40 CFR Part 30.307). Examples include:

- Use of facilities (office space, meeting rooms);
- Equipment (computers or office machines, audio-visual aids, as long as these were not originally donated to the recipient by the U.S. Government or purchased with Federal funds);
- Materials (telephone calls, photocopying); and
- Services rendered (accounting, secretarial, management, or scientific research), skilled and unskilled labor, and volunteer time.

TAG recipient groups should be strongly encouraged to meet these types of costs with in-kind contributions and to use the limited TAG monies for procuring technical advisor services. Cash contributions become part of the eligible matching share only when the cash is expended on TAG-eligible activities.

The use of TAG monies for equipment purchases should be discouraged. It is unlikely that any large equipment purchases could be justified as an appropriate use of TAG monies. However, equipment purchases may be allowed if the recipient has justified the purchases to EPA's satisfaction and they are specifically authorized in the recipient's assistance agreement. EPA has allowed TAG recipients to purchase computers on occasion. (Under Part 30, computers and other office equipment with a per unit acquisition cost of under \$5,000 are considered "supplies" rather than equipment. See also Section 9.7 of this guidance).

Reviewers should use guidelines provided in the *Managing Your Financial Assistance Agreement Manual* and OMB Circular A-122, *Cost Principles for Non-Profit Organizations*, to determine if certain in-kind contributions are allowable.

In-kind contributions must be included in an approved budget. The basis for deriving their value must be documented in the recipient's records with receipts, time sheets, and memoranda. Volunteer services, including the time donated by TAG recipient board members to attend meetings, may be counted as in-kind contributions if these services are integral to TAG activities. The value of the work, for matching fund purposes, is the price paid for similar work in the recipient's organization or the price the group would pay to have the work done in the private sector in that geographic area. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation. Volunteers must keep time sheets. Groups that benefit from the services of volunteers



and paid employees should use the same record-keeping methods for both, and must clearly document which services have been purchased or performed by paid employees or consultants and which were donated for the purposes of the matching share.

The value of non-expendable personal property (slide projector, computer, etc.) can be counted as an in-kind contribution, but this credit may not exceed the item's fair market value. (Non-expendable personal property has a useful life of at least two years and an acquisition cost of \$500 or more). When equipment is loaned to the TAG recipient, the amount credited to the matching funds requirement may not exceed the item's fair rental value. The value must be pro-rated according to the degree to which it is dedicated to TAG activities. For instance, if only half of an office is used full time by a technical advisor, a maximum of half of the office's fair rental value may be counted as an in-kind contribution. If the technical advisor uses half of an office half of the time for TAG activities, then only one-fourth of the office's fair rental value may be counted as an in-kind contribution. All costs must be necessary, reasonable, allowable, allocable, and directly tied to TAG activities to be credited toward the matching funds requirement.

Waivers to the matching funds requirement and the \$50,000 per site limit on TAGs are allowed, but only under limited circumstances. The criteria for granting waivers are outlined in this chapter.



Chapter 7: Waivers



7.1 Waivers to the 20 Percent Matching Share Requirement

Because in-kind contributions can be counted toward a group's 20 percent match, EPA will waive all or part of the matching funds requirement only under unusual circumstances.

To obtain a waiver, a recipient must demonstrate:

- The full match would be a financial hardship, which can be demonstrated by showing that the community has a high unemployment rate or below average income; and
- The waiver is necessary to ensure public participation in the site cleanup decision.

(Also see the discussion of "In-Kind Contributions" in Section 6.10 of this guidance.)

As a first step, the TAG review team should evaluate the reasons submitted by the citizens' group in support of its claim of financial hardship. Financial need may be demonstrated by showing that the community has a below-average per capita income, below-average median household income, or a high unemployment rate. The RPM's knowledge of citizens' groups and the geographic area will be very helpful in determining the community's economic situation. Other sources outside the group may be helpful in assessing the potential difficulty involved with raising the matching share or obtaining in-kind services from the community.

Waivers to the matching share requirement are not permissible after the last ROD for the last operable unit (OU) is signed.

7.2 Waivers to the \$50,000 TAG Award Limit

After a group has received its initial TAG, if additional funds over the \$50,000 ceiling per site are needed, the recipient may apply for a waiver. A group that has a TAG for more than one site is eligible to receive \$50,000 per site before a waiver is required.

Two criteria are used to evaluate waiver requests:

1. The recipient must have a satisfactory record managing previous TAG funds; and
2. Site characteristics must indicate that additional funds are necessary due to the nature or amount of site information. This determination is made by considering 10 criteria, three of which must apply to justify a waiver:
 - The RI/FS costs over \$2 million;
 - The ROD calls for innovative technologies or treatability studies;
 - EPA reopens the ROD;
 - The health assessment for the site results in the need for further health investigations or health promotion activities;
 - After a TAG is awarded, EPA identifies additional OUs;
 - The agency leading the cleanup issues an "Explanation of Significant Differences (ESD);"
 - After a TAG has been awarded, there is a change in a law or regulation that results in new site-related information;
 - The cleanup is expected to last more than eight years from the start of the RI/FS;

- There is significant public concern (for example, there is a large number of affected people, requiring many meetings and many copies of documents); and
- Any other factor that, in the view of the regional office, indicates the site is complex.

Waivers must be approved by the regional Superfund Division Director or his/her designee.

7.3 Amount of Waiver

In its request for additional monies that requires a waiver, the recipient must propose an amount and provide a basis that justifies this proposed amount. This basis must track the work of the site and match the recipient's statement of work. For this reason, EPA project officers/regional TAG coordinators should work closely with TAG recipients to help them develop a clear, well-thought-out statement of work for their TAG based on analysis of anticipated site activities.

The amount of a waiver should be based on a recipient's statement of work for the proposed funding period. Keep in mind that, in some cases, TAG recipients who receive funding above a certain threshold may become subject to new or additional administrative requirements. For example, TAG recipients that receive more than \$100,000 in a single year are subject to additional requirements for negotiating "fair share" goals for utilization of small, minority-owned, and women-owned business enterprises. (See also "Positive Efforts to Procure Goods and Services from Small Business Enterprises (SBEs), Minority-Owned Business Enterprises (MBE), and Women-Owned Business Enterprises (WBE)," in Section 9.1 of this guidance.) EPA project officers/regional TAG coordinators should inform recipients of this and other changes in the recipient's administrative or financial responsibilities that may result when a group accepts additional funding. Recipients must meet three of the 10 criteria specified in the rule to qualify for additional funding. (See Section 7.2 of this guidance.) This includes demonstrating responsible management of prior TAG funds. Incremental awards can be made when funding is limited. Regions should include standard language indicating that award amounts are contingent upon available funding and EPA is not obligated to fully fund every request.

7.4 One-Time, No-Cost Extension

Recipients can take advantage of an automatic, one-time, one-year extension to their TAGs available under Part 30. To do so, a recipient must send a letter to the GMO stating its intention to do so 10 days before the end of the budget period. However, EPA project officers/regional TAG coordinators should work closely with recipients so that they know well in advance if a recipient intends to request the one-time, no-cost extension. Whenever possible, EPA project officers/regional TAG coordinators should encourage recipients who choose to exercise this option to make their request at least 30 days before their TAG ends.

7.5 Other Requests for Extensions

A formal request is necessary to extend a TAG for any other period of time. If more time is needed after the one-year extension, the recipient should submit a formal request for a time extension. This extension requires an amendment to the grant agreement. Most regions require recipients to submit a letter requesting the extension, an updated Financial Status Report, a revised schedule of activities, and a new, signed SF-424 (first page only) showing the extended budget period and a new end date.

This chapter outlines the specific responsibilities of TAG applicants and summarizes the reporting and record-keeping requirements for recipients once they have obtained a TAG.

Chapter 8: Recipient Responsibilities



8.1 Obtaining Intergovernmental Review (IGR) of TAG Applications

The IGR process established under Executive Order 12372 requires Federal agencies to use the State and local processes of intergovernmental coordination for review of Federal assistance applications, direct development activities, and environmental documents.

The Headquarters GAD maintains a current list of programs subject to IGR in each State. If a TAG applicant is located in a State that has opted to include the TAG program in its IGR process, EPA cannot process a TAG application package without evidence that the applicant has submitted it to the appropriate State agency for review. In States without an IGR process, the applicant may be required to send the application to another clearinghouse or reviewing agency. The State or clearinghouse has 60 days to review each application and send comments to the regional GMO. In the rare cases in which comments are received on an application, EPA must accommodate the reviewing agency's recommendations or explain to the State or local Single Point of Contact (SPOC) why it has not adopted these recommendations before funding the application. Contact the regional GMO for specific information regarding IGR requirements for each State, and for a listing of appropriate SPOCs.

To accommodate the IGR process, one region requires applicants to submit their applications for IGR at the same time they are submitted to EPA. At least one region waits 65 days before awarding the TAG or gets copies of letters from the appropriate clearinghouse agencies.


As a courtesy to applicants, EPA project officers/regional TAG coordinators should inform applicants as early as possible in the application process as to whether or not their State participates in the IGR process, and, if appropriate, include the State or other reviewing agency's SPOC for IGR. Applicants should be advised to contact their SPOC as soon as possible so they can comply with the State's procedures for fulfilling this requirement.

8.2 Incorporating as a Non-Profit Corporation

Incorporation is a process through which an organization is granted legal status and is recognized under State law. To incorporate, an organization must file an application with the appropriate State agency and must specify that it wishes to incorporate as a non-profit organization. In most States, the corporate division of the Secretary of State is responsible for incorporation of organizations.

Section 45.4045 of the October 2000 final TAG rule says that a citizens' group must incorporate as a non-profit corporation for the purpose of participating in decision making at the Superfund site for which EPA provides a TAG. This requirement includes groups that form out of a coalition agreement.

A group that was previously incorporated as a non-profit organization and includes all individuals and groups who joined in applying for the TAG is not required to reincorporate for the specific purpose of representing affected individuals at the site, if, in EPA's discretionary judgement, the group has a history of involvement at the site. This policy is a change from the previous rule, which required organizations that were not incorporated specifically for the purpose of representing affected individuals to reincorporate for the purposes of the TAG program, unless they were able to demonstrate a "substan-



tial" history of involvement.

There are many ways a group can demonstrate a history of site involvement. For example, it can show that its members have attended public meetings regarding the site, or that the organization has held its own meetings focusing on site issues (by providing agendas reflecting such a focus). While EPA retains discretion in defining what constitutes a history of involvement, it is important to fully document in the file that the determination was made, and the specific factors that were considered in making the determination.

At the time of the TAG award, an applicant must demonstrate that the group has incorporated as a non-profit or filed the necessary documents for incorporation with the appropriate State agency. The necessary and reasonable incorporation costs will be considered an eligible pre-award cost. They may be charged to the TAG or counted toward the matching funds requirement as outlined in Section 35.4100(b) of the October 2000 final rule. However, because a group must be incorporated *before* receiving Federal funds, costs of incorporating cannot be paid for using an advance payment available under Section 35.4085. EPA cannot sign the grant award unless the group demonstrates that it has filed the necessary documents for incorporation with the appropriate State agency.

On or before the date that the first request for reimbursement is filed, the recipient must submit documentation (a copy of its incorporation document or a letter from the State) showing that the group has been officially incorporated by the State. If such documentation is absent, EPA will not reimburse the TAG recipient for the requested funds and may annul the TAG.

8.3 Obtaining Tax-Exempt Status From the U.S. Internal Revenue Service (IRS)

TAG regulations do not require TAG recipients to obtain tax-exempt status, but some regions actively encourage them to do so. The costs of obtaining tax-exempt status from the IRS are allowable costs under the TAG program, but may not be incurred prior to award. Incorporating as a non-profit organization does not automatically exempt an organization from taxation. Laws in some States may make it beneficial for TAG recipients to seek tax-exempt status from the IRS in addition to incorporating as a non-profit organization with the appropriate State agency. (See Resource Section C for the TAG program *Fact Sheet on Incorporation and Tax-Exempt Status* for additional information.)

Most States require non-profit corporations that are not tax exempt to file corporate income tax returns, even if the non-profit corporation has no revenue. Some States impose a minimum tax on all corporations, even non-profit corporations, that are not designated as tax exempt by the IRS.

To obtain tax-exempt status, the organization must apply to the IRS. The Internal Revenue Code includes more than 20 classifications of organizations eligible for tax-exempt status. The most appropriate designation for TAG recipients and other citizens' groups is under Section 501(c)(3), which indicates that the organization is a non-profit corporation organized and operated exclusively for a special and useful purpose. This classification allows the organization to solicit financial support from the public and to receive government grants and support from public and private foundations. Groups that receive tax-exempt status under Section 501(c)(4) and engage in any type of lobbying activities are prohibited from receiving Federal funds.



8.4 Reporting Requirements

Recipients must submit several types of reports during the life of their TAGs. Section 35.4170 of the October 2000 final TAG rule outlines reporting requirements for TAG recipients, including new reports necessitated by the inclusion of advance payments and elimination of the requirement for submitting draft final reports. The October 2000 final rule also clarifies requirements for reporting on the proactive efforts the recipient has made to procure from small business enterprises, minority-owned business enterprises, and women-owned business enterprises (SBE/MBE/WBE). (See Chapter 9 of this guidance.)

Outlined below are the reports TAG recipients must complete at various points during the life of their TAGs:

Type of Report	Required Information	Timing and Frequency
Federal Cash Transaction Report (only if recipients utilize electronic payment methods)	The amount of funds advanced or electronically transferred to the bank account of the recipient, and how those funds were spent.	Semiannually, within 15 working days following the end of the semiannual period that ends June 30 and December 31 of each year.
MBE/WBE Utilization	Whether the recipient contracted with a MBE/WBE in the past Federal fiscal year, the value of the contract, if any, and the percentage of total project dollars spent on MBE/WBEs.	Annually.
Quarterly Progress Reports	Full description in chart or narrative format of the progress the recipient made in relation to its approved schedule, budget, and the TAG project milestones, including an explanation of special problems the group encountered.	Quarterly, within 45 days after the end of each calendar quarter.
Financial Status Reports (FSRs) (No draft report required.)	Status of the project's funds through identification of project transactions.	Annually, within 90 days after the anniversary date of the start of the TAG project. The final FSR is due within 90 days after the end of the TAG group's funding period.
Final Report	Description of project goals and objectives, activities undertaken to achieve goals and objectives, difficulties encountered, technical advisor's work products, and funds spent.	Within 90 days after the end of the TAG project.



Review of Recipient Reports: EPA project officers/regional TAG coordinators should review quarterly progress reports to monitor recipient progress and to ensure that TAG funds are used only for allowable activities. (A sample quarterly progress report format for recipients is included in Resource Section B.) TAG funds may *not* be used for the following activities:

- Political and lobbying activities;
- Any tuition or other expenses for group members to attend training, seminars, or courses;
- Generation of new primary data, such as well drilling and testing (including split sampling);
- Challenging final EPA decisions (such as RODs), unless EPA has formally reopened such a decision for comment;
- Any activities or expenditures for group members' travel;
- Litigation or underwriting legal actions, such as paying attorneys or technical advisors to participate in any legal action or proceeding regarding or affecting the site; and
- Activities inconsistent with the cost principles stated in OMB Circular A-122, *Cost Principles for Non-Profit Organizations*.

OMB Circular A-122, *Cost Principles for Nonprofit Organizations*, makes unallowable for Federal reimbursement the costs associated with most kinds of lobbying and political activities. Lobbying includes electioneering and support of campaign organizations and political action committees and attempts to influence Federal or State legislation through contacts with government officials. The lobbying restrictions do not apply to Executive Branch lobbying, except when directly related to legislation (i.e., attempts to influence a decision to sign or veto legislation or to use state or local officials as conduits for lobbying of Congress or state legislatures). To be considered "lobbying," contacts with government officials must be related specifically to attempts to influence the introduction, enactment, or modification of any pending federal or state legislation. Letters to and contacts with Members of Congress related to EPA decisions and site issues do not constitute lobbying because they are not related specifically to the introduction, enactment or modification of legislation. However, the costs associated with these activities may be disallowed when they are not TAG related.

In addition to these reporting requirements, TAG recipients are required to:

- Comply with all reporting requirements in the terms and conditions of the TAG agreement;
- Keep complete financial records accurately showing how federal funds and the matching share were used, and whether they were in the form of cash or in-kind assistance; and
- Comply with reporting and record-keeping requirements in OMB Circular A-122 and 40 CFR Part 30.

TAG recipients no longer must comply with OMB Circular A-133, *Audits of Institutions of Higher Education and Other Non-Profit Organizations*, because they are unlikely to meet the \$300,000 per year threshold for inclusion under this requirement. (A sample contract review letter is included in Appendix B.)

8.5 Record Keeping

Section 35.4180 of the October 2000 final rule requires TAG recipients to keep records for 10 years from the date of the final Financial Status Report, or until any audit, litigation, cost recovery, and/or



disputes initiated before the end of the 10-year retention period are settled, whichever is longer. Recipient groups may dispose of TAG financial records at the 10-year mark only if they first obtain written permission to do so from the EPA regional office. These requirements also apply to technical advisors who contract with TAG recipients.

The October 2000 final TAG rule contains a new provision that gives TAG recipients an option to submit their financial records to EPA for safekeeping at the time they submit the final Financial Status Report to the regional office. Recipients also can opt to ship their records to EPA when the TAG ends so that shipping costs can be charged to the TAG. Otherwise, they will be responsible for shipping charges when they send their records to EPA 10 years later.

EPA project officers/regional TAG coordinators should contact former TAG recipients when the 10-year mark following closeout of their TAG approaches, to inform them as to whether or not they may dispose of their records. (Sample letters are included in Appendix B.) These letters should be sent by certified mail to the last known address for the recipient group. This method confirms that the notice was sent and who received it. It also documents EPA's attempt to deliver the letter if the addressee cannot be located.

ORC should be consulted in each case to determine if there are legal issues related to the specific TAG or site that impacts record-retention requirements for the recipient. If there is no ongoing legal action or suit, the recipient may dispose of records at the 10-year mark. If there is ongoing legal or audit activities related to the site or to the TAG, the letter should indicate that the former recipient may *not* destroy its records. In this case, the former recipient may choose to retain custody of the records or to send them to EPA for safekeeping.

EPA project officers/regional TAG coordinators also should contact all other former TAG recipients in writing to inform them that a new record-keeping option has become available and that they may transfer their TAG project records to EPA for safekeeping. These letters to former TAG recipients should include region-specific information explaining the procedures to follow for transferring records to EPA. The letter should ask recipients to provide an index to all files transferred to EPA; explain that EPA requires retention only of financial records, invoices, and work products produced by their technical advisors (in addition to whatever additional records that the ORC indicates must be retained); and indicate that all shipping costs must be paid by the TAG recipient.

8.6 Other Recipient Responsibilities

TAG recipients also are required to submit the following items to their EPA project officer/regional TAG coordinator at appropriate times:

Draft Subagreement Contracts and Amendments: Under Section 35.4205 of the October 2000 final rule, TAG recipients are required to notify EPA of any proposed subagreement, contract, or amendment over \$1,000 and to provide EPA with the opportunity to review all such contracts before they are awarded or amended. (Also see Chapter 9 of this guidance.)

Reports Prepared by Technical Advisors: Section 35.4185 of the October 2000 final rule requires TAG recipients to send to the EPA project officer/regional TAG coordinator a copy of each final written product prepared for the group as part of its TAG. EPA is encouraged to send a copy of these reports to local Superfund site information repositories.



Chapter 9: Procurement



TAG recipients will contract with a technical advisor (and sometimes with a grant administrator) and may procure other goods and services with TAG funds. This chapter summarizes the procurement procedures TAG recipients must follow and the requirements for submitting subagreement contracts to EPA for review.

9.1 Procurement Under Grant Agreements

The October 2000 final TAG rule outlines streamlined procurement rules with which all TAG recipients must comply for procurements under \$100,000. A TAG recipient also must abide by the applicable provisions of 40 CFR Part 30, *Procurement Standards*, for procurements over the small-purchase limit of \$100,000.

Requirements for Competitive Procurements: When procuring a contractor, TAG recipients must provide an opportunity for all qualified contractors to compete for the work. Section 35.4210 of the October 2000 final TAG rule summarizes provisions from 40 CFR 30.44(b) regarding procurement, as follows:

Size of Contract	Requirement
For purchases of \$1,000 or less	No oral or written bids are necessary. TAG recipients may make the purchase as long as the price is reasonable.
Proposed contract is over \$1,000 but less than \$25,000	Obtain and document oral or written bids from two or more qualified sources.
Proposed contract is over \$25,000 but less than \$100,000	Solicit written bids from three or more sources willing and able to do the work. Provide potential sources with the scope of work to be performed and the criteria that will be used to evaluate the bids. Objectively evaluate all bids, and notify all unsuccessful bidders.
Proposed contract is over \$100,000	Follow the procurement regulations in 40 CFR Part 30, which outline standards for TAG recipients to use when contracting for services with Federal funds. Part 30 also contains provisions on codes of conduct for the award and administration of contracts, competition, procurement procedures, cost and price analysis, procurement records, contract administration, and contracts.

A TAG recipient may not divide any procurement into smaller parts to stay within the dollar limits on procurements. Most regions do not require recipients to go through another procurement process if they originally hired a technical advisor using procurement procedures for contracts under \$25,000 and the



contract subsequently is amended to exceed that amount. However, it may be reasonable to require the recipient to do so if there is reason to suspect that the group purposely divided the contract to circumvent procurement requirements.

EPA project officers/regional TAG coordinators should emphasize the importance of documenting efforts to obtain competitive bids for applicable purchases whenever possible. In situations where only one qualified bidder can be found, TAG recipients must request written authority from the EPA award official to contract with the sole bidder.

According to Section 35.4205 of the October 2000 final rule, TAG recipients are required to inform EPA of any proposed contract over \$1,000, keep written records of the reasons for all their contracting decisions, make sure that all costs in a proposed contract are reasonable, and provide EPA an opportunity to review all draft contracts over \$1,000.

For all contracts over \$25,000, TAG recipients must do a cost analysis, which involves evaluating each element of a contractor's cost to determine if it is reasonable, allocable, and allowable. (For a discussion of how to conduct a cost analysis, see *The Superfund TAG Citizen's Handbook*.)

Positive Efforts to Procure Goods and Services from Small Business Enterprises (SBE), Minority-Owned Business Enterprises (MBE), and Women-Owned Business Enterprises (WBE):

TAG recipients must make proactive efforts to use SBEs, MBEs, and WBEs as often as possible; and must comply with EPA's MBE/WBE requirements in 40 CFR 30.44(b) and consider guidance for EPA's MBE/WBE program. The current guidance was revised in 1997 to ensure consistency with the Supreme Court decision in *Adarand v. Peña*, 115 S. Ct. 2097 (1995). (See *Federal Register*, August 28, 1997, page 45645.) This guidance may be accessed on the Internet at www.epa.gov/osdbu/. EPA is in the process of initiating a rulemaking for its MBE/WBE program. To the extent that EPA's final MBE/WBE rulemaking differs from the information found here, the MBE/WBE rulemaking will be used. (See Appendix C for the TAG program fact sheet on "Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Utilization.")

Under the 1997 MBE/WBE guidance, "fair share" objectives are negotiated with recipients of EPA financial assistance based on the availability of qualified MBEs and WBEs in the relevant procurement market. Under the proposed MBE/WBE rule, recipients of grants totalling \$100,000 or less in EPA funds for any particular project or in a single fiscal year are exempt from negotiating fair share objectives. TAG recipients, however, are not exempt from taking positive steps to utilize MBE/WBEs and SBEs.

For this reason, EPA project officers/regional TAG coordinators are encouraged to provide guidance to TAG recipients about the MBE/WBE requirements in 40 CFR 30.44(b) summarized in the TAG program fact sheet "Finding, Choosing, and Hiring a Technical Advisor." This fact sheet outlines the positive steps a group must take to use small businesses, minority-owned businesses, and women-owned businesses. For TAG recipients, these steps include the following:

- Place SBE/MBE/WBE firms on mailing lists and use them for procurements as often as possible;
- Send requests for proposals and solicitations for technical advisors and grant administrators to historically black colleges and universities within an appropriate geographical area, and plan time frames for purchases and contracts to encourage and facilitate participation by SBE/MBE/WBEs;
- Advertise solicitations in larger-circulation newspapers and in minority media. When advertising



with a large firm, ask whether the firm intends to contract with SBE/MBE/WBEs;

- Contact local government offices and State agencies within the local area to identify SBE/MBE/WBEs;
- Divide the tasks in large solicitations so that SBE/MBE/WBEs can participate;
- Use the services and help of such organizations as the Small Business Administration (SBA) and the Department of Commerce's Minority Business Development Agency (MBDA) in the solicitation and utilization of SBE/MBE/WBEs; and
- Require the technical advisor to follow these same steps when procuring goods or subcontracting services.

TAG recipients are required to report annually on their positive efforts to solicit and utilize SBE/MBE/WBEs and to document these efforts in their files. Documentation can include:

- Records of where solicitations for technical advisors and/or grant administrators were sent and advertised; and
- Records of contacts with local government offices, SBA, and MBDA to identify SBE/MBE/WBEs.

9.2 Helping Recipients Identify Qualified Technical Advisors

TAG recipients should be encouraged to select a technical advisor who has experience working on hazardous or toxic waste problems, relocation, redevelopment, or public health issues, and communicating those problems and issues to the public. The October 2000 final TAG rule contains several changes regarding the type of experience a technical advisor should have, and, for the first time, specifies that technical advisors may be retained to provide technical assistance on issues of public health, redevelopment, and permanent relocation.

In general, technical advisors must meet the following qualifications:

- Demonstrated knowledge of hazardous or toxic waste issues, relocation issues, redevelopment issues, or public health issues as they relate to hazardous substance/toxic waste issues, as appropriate.
- Academic training in a relevant discipline (biochemistry, toxicology, public health, environmental sciences, engineering, environmental law and planning); and
- Ability to translate technical information into terms understandable to community members.

Technical Advisors for Public Health Issues: A technical advisor for public health issues must have received his or her public health or related training at accredited schools of medicine, public health, or accredited academic institutions of other allied disciplines (such as toxicology). While not required to have a current association with such institutions at the time they are contacted by TAG recipients, EPA should encourage recipients to consider accredited institutions as good potential resources for public health technical advisors.

Technical advisors for public health issues can interpret the health aspects of information found in site-related documents. Technical advisors hired for issues associated with the health effects of toxic waste are not permitted to generate any new health data through biomedical testing (for example, blood or urine testing), clinical evaluations, health studies, surveillance, registries, and public health intervention.



Technical Advisors for Redevelopment Issues: The October 2000 final TAG rule clarifies that TAG recipients may hire technical advisors for analysis of community plans and preferences regarding future land use. Redevelopment technical advisors should have knowledge, training, and experience in land-use planning with an emphasis on economic development, environmental planning, or related fields, as appropriate. Redevelopment activities done by a recipient and its technical advisor must be limited to interpreting redevelopment information developed as part of the Superfund cleanup. This limitation does not preclude recipients from looking at reuse and development possibilities, but it does preclude them from undertaking their own redevelopment plan when the Superfund process has not touched upon redevelopment issues.

Technical Advisors for Relocation Issues: The preamble of the October 2000 final TAG rule specifies that TAG recipients may contract with technical advisors on relocation issues. While the decision about whether to use TAG funds for relocation issues is up to the TAG recipient, regions should encourage them to spend their limited TAG funds on those technical issues of critical importance for their sites. EPA prefers that TAG funds be used to obtain technical assistance on relocation issues only when there is a reasonable possibility that relocation will be selected as a remedy.

Generally, EPA's preference is to address the risks posed by contamination at Superfund sites by using well-designed methods of cleanup which allow people to remain safely in their homes and businesses. Because of CERCLA's preference for cleanup, it will generally not be necessary to routinely consider permanent relocation as a potential remedy component. Permanent relocation may be considered as an alternative as part of the FS in situations where EPA has determined that:

- Structures must be destroyed because they physically block or otherwise interfere with a cleanup and methods for lifting or moving the structures safely, or conducting cleanup around the structures are not implementable from an engineering perspective;
- Structures cannot be decontaminated to levels that are protective of human health for their intended use;
- Potential treatment or other response options would require the imposition of unreasonable use restrictions to maintain protectiveness (e.g., typical activities, such as children playing in their yards, would have to be prohibited or severely limited); or
- An alternative under evaluation includes a temporary relocation expected to last longer than one year.

When relocation is an issue, residents need to understand a multitude of issues associated with the relocation process, as prescribed in the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended (42 USC 460 *et seq.*), sometimes known as the Uniform Relocation Act (URA). To successfully interpret information regarding relocation as a remedy, relocation technical advisors should have demonstrated knowledge, training, and experience in relocations, including knowledge of the URA. Relocation technical advisors also should have experience working with developers, brokers, and lenders; and demonstrated knowledge of appraisals, title searches, and State and local tax laws. All of these areas of expertise are essential if a technical advisor is going to successfully interpret information regarding relocation as a remedy.



9.3 Procurement of Grant Administrators

Recipients may use TAG funds to procure the services of a grant administrator. The TAG program has always allowed the procurement of grant administrators. The new TAG rule explicitly states that TAG funds may be used for this purpose. Hiring a grant administrator is subject to the same procurement requirements that apply to hiring a technical advisor or other contractor, as outlined in this chapter. A TAG group member may be retained as a grant administrator as long as all procurement rules are followed, and as long as he or she did not help write the specifications or screen candidates for the position.

9.4 Restrictions on Hiring Technical Advisors or Grants Administrators

Section 35.4195 of the October 2000 final rule specifies that TAG recipients may not hire a technical advisor who is doing work for the Federal or State government or any other entity at the same NPL site for which the technical advisor is being sought, nor anyone on the *List of Parties Excluded from Federal Procurement or Non-Procurement Programs*. TAG recipients also may not hire anyone who wrote the specifications for the contract or who helped screen or select the contractor.

Conflicts of Interest: Prospective contractors must comply with the conflict of interest provisions in 40 CFR Part 30, which prohibit TAG recipients from engaging the services of any contractor who has a conflict of interest. To comply with these requirements, the technical advisor or other prospective contractors must list any relationships with PRPs. The names of the PRPs at the Superfund site in question can be obtained from the site's RPM.

Prospective contractors also must submit a disclosure statement with the following information to the TAG recipient group with his/her bid or proposal:

- Information on his/her financial and business relationship with all PRPs on the site, with PRP parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement includes past and anticipated financial and business relationships, and services related to any proposed or pending litigation with such parties;
- Certification that, to the best of his/her knowledge and belief, the prospective contractor has disclosed such information or no such information exists; and
- A statement that he/she will disclose to EPA immediately any such information discovered after submission of the bid or after award.

If, after evaluating this information, the TAG recipient decides that a prospective contractor has a conflict of interest that cannot be avoided or otherwise resolved, the TAG recipient must exclude that contractor from consideration. TAG recipients must retain these disclosure statements for their records and should submit copies to the EPA project officer/regional TAG coordinator. EPA project officers/regional TAG coordinators should check with their GMOs to see if recipients are required to use specific standard language or forms for this purpose.

9.5 Contracts with Technical Advisors and Grant Administrators

Types of Subagreement Contracts: Recipients should be encouraged to use fixed-price or labor-hour subagreement contracts whenever possible. Under labor-hour contracts, payment is made on



the basis of a specified fixed loaded labor rate. The hourly rate includes wages, overhead, general and administrative expenses, and profit. In reviewing this type of contract, the EPA project officer/regional TAG coordinator determines if:

- The scope of work is consistent with the scope of services in the TAG agreement;
- Rates established for the services to be provided are reasonable; and
- The maximum amount to be obligated for the budget period and spent for the technical advisor has been established.

TAG recipients also may use other types of contracts, including cost reimbursement price, or per diem. Chapter 21 of the *Assistance Administration Manual* contains guidance for reviewing these types of contracts.

TAG recipients must award contracts only to responsible contractors able to work successfully under the terms and conditions of a proposed contract. TAG recipients cannot award cost-plus-percentage-of-cost contracts, which are cost-reimbursable arrangements that provide the contractor with a profit that goes up as the costs go up.

A cost-plus-percentage-of-cost contract is quite different from the common cost-plus-fixed-fee contract. In a cost-plus-fixed fee contract, the parties may agree upon a contractor's profit that is based upon a percentage of the *estimated* cost of the project. Once the contract is signed, however, that profit becomes "fixed" and the contractor is entitled to it upon successful performance.

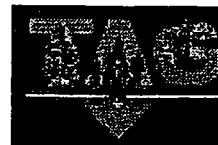
Example: In a legal cost-plus-fixed-fee contract, the TAG recipient and the contractor agree that the contract may require 1,000 hours of work and \$44,000 in anticipated salaries, benefits, overhead, materials, and travel. This amount is the projected cost. The contractor or for-profit organization will expect a profit, or "fee." If the TAG recipient agrees that an 8 percent fee is reasonable, the parties sign a contract limiting the contractor to \$44,000 plus $.08 \times \$4,400 = \$3,520$ in "fixed fee," for a total contract of \$47,520. If the contractor is able to complete the job efficiently, and he or she bills the TAG recipient for actual costs of only \$41,000, the contractor still gets the \$3,520 (an effective 8.6 percent profit). However, you have saved \$3,000 in reimbursable costs, so the arrangement is mutually advantageous. If the contractor "over runs" the contract and incurs costs of \$47,000 (assuming this overrun is agreed to in advance), the contractor still only gets \$3,520 (7.5 percent profit). This would become an illegal cost-plus-percentage-of-cost contract if the contractor billed the TAG recipient for 8 percent profit based on his total costs and expected to receive a profit \$3,760 ($.08 \times \$47,000$).

Proposed contracts also should require that any cost-reimbursable subcontracts (down to any level) issued by the contractor also prohibit cost-plus-percentage-of-cost arrangements. The contract may have language similar to this:

The estimated cost for this contract is \$44,000. The fixed fee is \$3,520. Under no circumstances may the contractor claim expenses in excess of the estimated cost without prior written consent of [the TAG recipient].

Model Contract Clauses: A subagreement contract will clearly specify the following:

- Statement of work (the duties to be performed by the contractor and deliverables);
- Schedule for performance (the period in which these tasks will be done);
- Due dates for deliverables;



- Total cost of the contract (the maximum amount to be obligated for the funding/budget period, which the contract clearly states are “not to exceed”);
- Payment provisions (the method, schedule, and conditions of payment, including invoicing procedures and requirements for retaining and disposing of all records generated under the agreement);
- The following clauses from 40 CFR Part 30, Appendix A:
 - (A) Equal employment opportunity; and
 - (B) Suspension and debarment.
- The following clauses from 40 CFR 30.48:
 - (A) Remedies for breaches of contract—40 CFR 30.48(a);
 - (B) Termination by recipient—40 CFR 30.48(b); and
 - (C) Access to records—40 CFR 48(d).
- Provisions that require contractors to retain for 10 years after the end of the contract detailed records related to work done under a TAG, as outlined in Section 35.4180. Contractors must retain detailed records regarding: acquisitions, work progress reports, expenditures, and commitments indicating their relationship to established cost and schedules. (See Section 8.5 of this guidance for further information.)

Other Requirements: In addition, contractors retained by TAG recipients must comply with the following provisions when awarding subcontracts:

- Section 35.4205(b) regarding documentation;
- Section 35.4205(c) and (f) pertaining to cost;
- Section 35.4195(c) pertaining to suspension and debarment;
- Section 35.4200(b) pertaining to responsible contractors;
- Section 35.4205(g) pertaining to disadvantaged business enterprises;
- Section 35.4200(a) pertaining to allowable contracts;
- Section 35.4235 pertaining to contract provisions; and
- Cost principles in 48 CFR Part 31, the Federal acquisition regulation, if the contractor and subcontractors are profit-making organizations.

(See Resource Section B for sample contracts for technical advisors and grant administrators.)

9.6 EPA Review of Contracts

Under Section 35.4205 of the October 2000 final TAG rule, TAG recipients are required to notify EPA of any proposed subagreement contract or amendment over \$1,000 and to provide EPA the opportunity to review all such contracts before they are awarded or amended. While the TAG rule does not specify a time frame for EPA to complete its review, regions are encouraged to complete their reviews of proposed contracts within 10 working days and are strongly encouraged not to exceed 30 days. Recipients also are required to provide EPA with the opportunity to review all changes to the technical advisor’s statement of work and budget.

The provision does not require EPA to exercise this option, and some regions choose not to do so. Regions that do exercise their option to comment on draft contracts should be careful to note that their comments are suggestions, not requirements, and that their review does not mean that EPA



approves the contract. Most regions strongly encourage TAG recipients to include all required clauses in their subagreement contracts. When a draft contract does not meet government requirements, regions may choose to warn the TAG recipient that if it chooses to go forward with a

The purpose of EPA's review is not to approve the contract, but to ensure compliance with EPA's procurement regulations and to avoid potential problems that might otherwise arise without such a review. Most regions alert recipients when required clauses are not included or when language in draft contracts deviates substantially from suggested language in the model contract in the Superfund Technical Assistance Grant (TAG) Citizen's Handbook.

contract that does not include all necessary clauses, it runs the risk of having to return to the government all of the funds paid to the advisor. It is particularly important to ensure that the proposed contract is not a cost-plus-percentage-of-cost arrangement. This type of contract is prohibited under Part 30. (See Section 9.5 above.) Recipients who submit a cost-plus-percentage-of-cost contract should be cautioned strongly that EPA cannot reimburse them for costs incurred through a cost-plus-percentage-of-cost contract, and that the recipient group still could be liable for paying a contractor retained through a contract of this type.

TAG program regulations require recipients to submit draft contracts to EPA before they are finalized. If, however, a recipient submits a signed contract to EPA, the region still should exercise its option to review the document. If EPA's review finds shortcomings or other potential problems with the signed contract, the EPA project officer/regional TAG coordinator should notify the recipient immediately of these issues and strongly encourage the recipient to amend the contract by mutual agreement with the contractor, to protect the TAG group from potential problems in the future. (See Resource Section B for a sample letter indicating the region has reviewed a draft contract).

9.7 Equipment and Supplies

TAG recipients may use a portion of their TAG funds to rent or purchase office supplies, computers, and other office machines necessary to complete the project workplan and administer the TAG. Under Part 30, computers and other office equipment with a per unit acquisition cost of under \$5,000 are considered "supplies" rather than equipment. (See Part 30, Sections 30.34 and 30.35 for a full discussion.) These expenditures must be itemized in the recipient's project budget. EPA project officers/regional TAG coordinators should review recipient budgets to ensure that such expenditures are reasonable, and that they are properly characterized as supplies or equipment. Recipients should provide documentation of costs for purchasing versus rental of such equipment.

Title to equipment and supplies purchased with TAG funds vests in the recipient, who may retain these items upon termination or completion of the project. However, upon termination or completion of the project, Part 30 requires recipients to compensate the Federal awarding agency for equipment whose current market value exceeds \$5,000, and for its residual inventory of unused supplies exceeding \$5,000 in total aggregate value.

Chapter 10: Budget and Finance



This chapter describes internal budgeting procedures for the TAG program and methods for processing and making payments to TAG recipients.

10.1 Internal Budgeting

EPA developed the SCAP process to facilitate accurate fiscal budgeting for actions at NPL sites throughout the country. A proposed SCAP for a particular fiscal year is submitted 12 to 18 months prior to the beginning of that year. It includes individual quarterly estimates of the level of spending to occur at every NPL site. The SCAP is updated through WasteLAN throughout the year based on EPA Headquarters and regional staff review of the figures to produce an accurate, workable budget. Most SCAP information is available to the public through a FOIA request.

TAG funds constitute an additional budget category included in the site expenditure projections. Uncertainty about the number, dollar value, and site location of TAG awards complicates this process. Regional offices should anticipate sites at which citizens' groups are likely to request a TAG. Based on the complexity and stage of cleanup at the site, regional staff must estimate the potential TAG amount appropriate for the site. You should assume a \$50,000 TAG award may take place at any time during the life of the site's remediation project. A lesser award may be appropriate for some sites if the work underway is nearly complete. Of course, the amount of funds awarded should be evaluated on a site-specific basis. Also, TAG funding is subject to the availability of funds. EPA should inform potential TAG recipients if funding constraints preclude or diminish funding.

WasteLAN adjustments should include anticipated TAG funding for all eligible sites. When unanticipated TAG awards are needed, additional WasteLAN adjustments may be submitted. Although EPA Headquarters will re-evaluate all SCAP requests on a quarterly basis, it is advisable to plan realistically for such budgeting needs during the initial request for that fiscal year.

Once a TAG has been awarded, the recipient will draw down TAG funds on a reimbursement basis in accordance with the TAG grant agreement. Regional staff should periodically review the status of the TAG to determine if additional funds will be required to sustain the TAG for the life of the remediation project. Once it has been determined that additional funds are necessary, WasteLAN must be adjusted to reflect the need in the SCAP.

Regional staff also should determine if funding for technical assistance at a particular site may be available through other mechanisms, particularly through the use of a site-specific special account. Site-specific special accounts are a relatively new mechanism through which funding from PRPs may be used to finance TAGs.

Use of Site-Specific Special Accounts: Increasingly, when negotiating settlements with PRPs, EPA seeks to ensure that PRP payments are deposited in a site-specific special account. As part of EPA's Superfund administrative reforms, EPA strongly encourages using these accounts for response actions. EPA project officers/regional TAG coordinators should use special account monies rather than appropriated Superfund monies when awarding a TAG to a community group at a site with a special account. Regions should use appropriated Superfund monies in the absence of special account funds. Special account monies may be tapped for new TAGs or to provide additional funding for existing TAGs. The latter may be done by amending an existing TAG accounting code to show the special account as the funding source.



EPA policies and procedures for accessing site-specific special accounts are still evolving and may vary somewhat from region to region. In general, EPA project officers/regional TAG coordinators should follow these steps:

1. When any request is received for TAG monies, check the EPA Chief Financial Officer's Intranet page to see if the site has a site-specific special account. If the site is listed in the Office of the Chief Financial Officer's (OCFO's) Intranet page and monies are available, contact the RPM or OSC at the site to confirm these monies may be used to fund a TAG.

To check to see if a site has a site-specific special account, go to OCFO's Intranet page at intranet.epa.gov/ocfo. Click on the "Financial Services" link in the left-hand column. Scroll down to "Special Accounts Report" and click on the link for the most recent report. Scroll down the list of regional reports and click for a particular region. This Intranet page contains reliable and relatively up-to-date information on special accounts. To see if there might be any money available in the account, look in the far right-hand column for the balance available.

2. Contact ORC to confirm that there are no restrictions in the underlying settlement on use of the site-specific special account monies for a TAG at the site in question.
3. Ask the OSC or RPM to send a short memorandum to the regional Superfund Administrative Officer stating that there is money available in the special account for the site and that it may be used to fund a TAG. This notification usually can be done informally through e-mail.

Generally, there are at least three contacts in each region who can be consulted for more information about using site-specific special accounts to fund TAGs—one each in the ORC, the Superfund program office, and the Superfund financial office. If the ORC attorney assigned to the site is not familiar with special account issues, consult the designated special account contact in the ORC. Follow the same procedure if the program office or Superfund financial office contact for the site in question is unfamiliar with special accounts. Consult with the designated expert in that office if the RPM or OSC needs assistance in this regard. For a list of the names of the special account contacts in any region, call the Headquarters Office of Enforcement and Compliance Assurance.

10.2 Commitment and Obligation of Funds

The process for committing and obligating funds is the same, regardless of whether the monies come from a site-specific special account or from EPA's Superfund appropriation (the "Pipeline Operations" allowance). Certifications of fund availability are prepared by the EPA project officer/regional TAG coordinator and forwarded with the funding recommendation to the GMO. When assigning accounting data, use the two-digit action code "TG" in the account number as well as the Site ID Number and the two-digit number assigned for the entire site. Forward a commitment notice to the Comptroller's Office. This must be signed and the funds committed prior to signature by the award official.

Obligation of funds occurs once the award official has signed the TAG agreement. After signature, the GMO forwards the award document to the Comptroller's Office and the obligation is entered into the financial management system. Once the obligation is recorded, the money is reserved for outlays to the recipient as required.



10.3 Forms of Payment and Payment Procedures

The method of payment under the TAG program is reimbursement of costs incurred, but not necessarily paid. This method is used regardless of which form of payment—Treasury check, Automated Clearinghouse (ACH) payment, or Electronic Funds Transfer (EFT)—is used in a particular region. Payment procedures vary somewhat from region to region, primarily because of differences in whether TAG recipients use the ACH system and how requests for payment are processed. For this reason, EPA project officers/regional TAG coordinators should consult their GMO to determine the specific payment procedures used in their region. The award official must specify the payment procedure on the award document and include instructions about how and where to submit requests for payment.

Depending upon the region, payments to grantees may be made by Treasury check or EFT, which allows the government to directly deposit funds electronically into the bank account of the recipient group using the traditional or ACH payment systems. (Sample materials used by a region to provide EFT payments to recipients is included in Resource Section B.)

Processing Requests for Reimbursement: All regions used to require TAG recipients to submit a Request for Reimbursement (SF 270) to be paid. This still is required in many regions. In regions that use the SF 270, TAG recipients should submit their SF 270s on a quarterly basis to request payment from the designated regional office. The SF 270 can be submitted on a monthly basis if expenses exceed \$500. Regions may require further documentation of costs to ensure compliance with regulatory requirements. Such documentation must be kept in the TAG recipient's file throughout the life of the project.

The region will review the SF 270 and supporting documentation to determine compliance with the terms of the agreement. The regional office identified in the award document to receive payment requests will send the payment request, within two working days of receipt, to the EPA project officer/regional TAG coordinator for review and approval.


Following receipt of the SF 270, the EPA project officer/regional TAG coordinator should approve the request if the project is progressing satisfactorily. The EPA project officer/regional TAG coordinator must determine that the:

- Technical advisor is performing the tasks as outlined in the recipient's statement of work;
- Activities submitted for reimbursement are eligible according to 40 CFR 35.4070; and
- Recipient has adhered to the grant agreement conditions, including all Federal reporting requirements.

Once the EPA project officer/regional TAG coordinator approves a SF-270, the original is forwarded to the appropriate office in the region, usually the Comptroller's Office. The Comptroller's Office processes the payment to the recipient.

If the request is not approved, the EPA project officer/regional TAG coordinator, with assistance from the Grants Specialist, will determine the appropriate action.

Processing Automated Clearinghouse (ACH) Payments: The ACH system is an electronic form of payment available in many regions. Under ACH, the TAG recipient is required to have a bank account with electronic funds transfer capabilities. With the implementation of ACH payments to recipients, processing of reimbursement requests changed in several regions. In general, the ACH payment system eliminates the requirement that a TAG recipient submit an SF 270 to request payment from EPA, which is reviewed by the EPA project officer/regional TAG coordinator prior to payment. Instead, the recipient faxes a request for payment to the regional office, and funds are transferred



In one region, recipients are required to fax a copy of their request for reimbursement to the EPA project officer/regional TAG coordinator at the same time it is submitted for payment. In another, the EPA project officer/regional TAG coordinator still has three days in which to review requests for reimbursement under the ACH.

electronically directly to the recipient's bank account. In some regions, EPA project officers/regional TAG coordinators still review requests for reimbursement submitted by recipients paid through the ACH system.

Implementation of the ACH system for payments to small grantees, including TAG recipients, is in transition in some regions. Depending on the region, ACH may be mandatory, one of several payment options available, or unavailable to recipients. In some regions, some TAG recipients may be paid under the ACH, while others are paid using other forms of payments. EPA project officers/regional TAG coordinators should check with their regional GMO to determine specific payment procedures that apply to TAG recipients.

Other Forms of Payment: ASAP is a new, government-wide payment system operated through the Department of the Treasury. To be paid through ASAP, recipients must purchase a special modem. To date, no TAG recipients are paid under this new system.

10.4 Advance Payments

Section 35.4085 of the October 2000 final TAG rule is a new provision authorizing one-time advance payments to TAG recipients under certain circumstances. Advance payments provide recipients with the resources necessary to establish their organization and implement their work plan. Recipients must specify how they will use the advance. There are several limits on cash advances:

- Advance payments may not exceed \$5,000;
- The types of expenditures for which recipients may seek a one-time advance payment are limited to expenditures for opening a bank account, supplies and postage, advance on rent or lease for office space, advertising related to procurement, and rental of other equipment. (Expenditures associated with contracts for technical advisors and other contractors are not allowable because using advance payments in this fashion might interfere with EPA's opportunity to review draft contracts);
- Advance payments only will be provided on a one-time basis; after an initial advance, EPA will reimburse recipients for actual expenses they incur;
- Recipients must request in writing an advance payment for the specific activities and goods/services for which funds are needed; and
- SF 270 can be used to request an advance payment. A one-time advance can be processed as long as this is indicated in the award document.

It is important to include in the TAG award document a special condition stating the amount of the advance and the purposes for which it may be used. If this is not done, many regions will require a grant amendment to process a one-time advance payment.

If the advance is not used for the purposes specified by the recipient in its request for a cash advance, it may have to be returned. If the costs incurred are less than the advance, the recipient can deduct the excess from its first reimbursement request. Advance payments cannot be used for petty cash.



10.5 Cost Recovery

EPA's Superfund enforcement program is based on the "Enforcement First" principle. This means that EPA is committed to using any available enforcement options first before resorting to use of appropriated Fund monies. (See Chapter 10.1 and Chapter 12.4 of this guidance for a full discussion of EPA efforts to get PRPs to arrange for independent technical assistance or to finance a TAG via a site-specific special account.)

When EPA is unable to get the PRPs to bear the expense of a TAG up front, EPA provides the monies for the TAG. Thereafter, EPA may attempt to recover these and other cleanup monies from the PRPs. Cost recovery is an effort by EPA to recover all costs related to the cleanup of a Superfund site from anyone potentially responsible for, or contributing to, contamination problems at the site.

TAG funds are fully recoverable pursuant to CERCLA Section 107(a), because they are a necessary response activity cost consistent with the NCP. When a region prepares a cost recovery referral to the Department of Justice, it should include documentation of TAG costs as part of its expenditures. (See Chapter 12 of the *Superfund Cost Recovery Procedures Manual* (September 1994); and pages 21-25 of *Model Litigation Report for CERCLA Sections 106 and 107 and RCRA Section 7003*, issued June 21, 1989 by Edward Reich, Acting Assistant Administrator for Enforcement and Compliance Monitoring.) For additional guidance on the type of documentation needed to prove EPA's cost recovery claim in court, see *Procedures for Documenting Costs for CERCLA Section 107 Actions*, issued January 30, 1985, by the Director, Office of Waste Programs Enforcement (OWPE).



Chapter 11: TAG Closeout, Termination, and Enforcement



This chapter outlines the procedures for closeout of TAGs, and for handling recipient performance problems that may require EPA to take enforcement action or to terminate a TAG.

11.1 Closing Out a TAG

Recipients are required to submit all financial, performance, and other reports, including the final project progress report and the final FSR no later than 90 days after the end of the approved project period. EPA project officers/regional TAG coordinators may recommend an extension of this time period. Recipients also must pay all TAG-related bills before submitting a FSR. At the end of the approved project period, recipients also must return any unused cash that EPA advanced or paid to them, or draw down, if necessary. (OMB Circular A-129, *Policies for Federal Credit Programs and Non-Tax Receivables*, governs unreturned amounts that become delinquent debts.) Recipients also are required to compensate the government for equipment when the current market value exceeds \$5,000, and for its residual inventory of unused supplies exceeding \$5,000 in total aggregate value when they no longer have need for it. (Part 30 allows equipment to be used for other EPA-related work.) However, most TAG recipients probably will not have equipment or an inventory of supplies that meets this threshold. (See also Section 9.7 of this guidance and Part 30, Sections 30.34 and 30.35, which addresses disposition of property purchased with Federal funds.)

Approximately 90 days before the end of the project, the region should send a letter or contact the TAG recipient by telephone or email as a reminder requesting that the recipient submit the FSR and final progress report or request an extension. Once the recipient has submitted this information, the formal closeout process can begin. Generally, GMO is responsible for closing out TAGs, with the assistance of the TAG project officer/regional TAG coordinator. The process requires verification by the EPA project officer/regional TAG coordinator of the following:

- Receipt and review of all required progress reports and the final report;
- All activities described in the reports were eligible for TAG support;
- The recipient completed all programmatic terms and conditions in the TAG agreement (if applicable);
- Equipment and supplies purchased under the TAG agreement were disposed of in accordance with 40 CFR 30.34 and 30.35;
- EPA was compensated for residual equipment and supplies in accordance with 40 CFR 30.34 and 30.35; and
- The technical portions of the TAG agreement have been completed and the file can be officially closed out.

GMO also may ask the EPA project officer/regional TAG coordinator to recommend whether the TAG agreement should be audited. (A sample "Technical Completion Memo" used in Region 2 for the closeout process is included in Resource Section B.)

Once the EPA project officer/regional TAG coordinator has made his or her recommendation, GMO processes the closeout. If there are no funds remaining at the time of the closeout, a letter informing the recipient that the TAG has been closed out will be sent to the recipient. If there are any TAG funds remaining at the time of closeout, GMO may have to process a deobligation amendment to the TAG.



Often it is necessary for the EPA project officer/regional TAG coordinator to work closely with TAG recipients during the closeout process, particularly in completing the FSR. If a TAG recipient fails to submit the FSR and/or final project progress report—both of which are necessary for closeout—the region will send a letter to the recipient. The letter states that EPA may take noncompliance action and gives the recipient a deadline for providing the required reports. If the recipient does not respond to this request within the stated time period, the region can proceed to take appropriate noncompliance actions in accordance with 40 CFR 30.60 and 30.63. If the recipient cannot be located after two attempts to contact it in writing, ORC should be consulted for the authority to terminate the TAG.

11.2 Enforcement Actions

TAG recipients, like other Federal grantees, must satisfy the terms and conditions of their assistance agreement and adhere to the applicable regulations, including Part 35, Subpart M, and Part 30. In some cases, problems may arise with a recipient's performance that can be easily resolved by informal discussions. At other times, problems may involve nonperformance, poor performance, or a criminal matter that places EPA's TAG program at significant risk. Careful coordination and monitoring of a recipient's performance will help avoid any serious problems. However, there are a number of enforcement actions that EPA may take when serious problems arise.

If a recipient materially fails to comply with the terms and conditions of the assistance agreement or violates any of the applicable regulations, EPA may take one or more of the following actions, as appropriate to the circumstances:

- Temporarily withhold payment or advance payments until the recipient corrects the deficiency;
- Not allow the recipient to receive reimbursement for all or part of the activity or action not in compliance;
- Issue a stop-work order;
- Wholly or partially suspend or terminate the assistance agreement for cause;
- Withhold additional funding to the project;
- Take enforcement action, including requesting that the director of the GAD debar or suspend the recipient as an eligible grant recipient;
- Place special conditions in a TAG agreement; or
- Take other actions that may be available legally, including initiating judicial proceedings.

Award officials can withhold payments if the recipient fails to comply with the tasks, reporting requirements, or conditions of the assistance agreement. Before payment is withheld, the award official must provide reasonable notice, in writing. The award official can withhold only the amount of funding necessary to ensure the recipient's compliance with the assistance agreement. The recipient can appeal to the appropriate regional official the decision to withhold partial funding. (For appeals, see Section 11.4 of this guidance.)

When a stop-work order is issued, the recipient must immediately curtail all work or activities described in the order and take all reasonable steps to minimize costs. The award official issues the order in



writing. The order remains in effect for 45 days after the recipient receives it. Any exceptions to the time duration (making it longer or shorter) must be made by mutual agreement between the recipient and EPA. If the recipient and EPA fail to resolve the problem during the stop-work period, EPA may terminate or annul the agreement. The award official must notify the recipient of the termination or annulment. The recipient can appeal that decision through the appropriate regional official.

11.3 Termination

The EPA award official can terminate an assistance agreement, in whole or in part, at any time before the date of completion, if he or she determines that the recipient:

- Did not make substantial progress on the project without good cause;
- Obtained the assistance agreement by fraud or misrepresentation;
- Practiced corrupt administrative procedures;
- Delayed completing the project without good cause; or
- Failed to meet the project's purpose as stated in the assistance agreement.

The award official must provide the recipient with an opportunity for consultation prior to issuing a termination notice, which must include the reasons for the termination and its effective date. The recipient must stop work immediately when it receives the termination notice. EPA will not reimburse the recipient for new commitments made after the recipient receives the termination notice.

11.4 Appeals and Disputes

If EPA and a recipient have a disagreement about the assistance agreement or about an EPA decision that results in an applicant not receiving a TAG, the disagreement must be resolved at the lowest administrative level possible. If an agreement cannot be reached, the EPA disputes decision official (an individual who works in the regional office that administers the TAG) is the person designated by the award official to resolve disputes concerning assistance agreements. He or she must issue a written decision to the recipient. This decision is considered final agency action unless the recipient files a request for review by registered mail, return receipt requested, within 30 days. The request must be filed with the RA and must include a:

- Copy of the EPA disputes decision official's final decision;
- Statement of the amount in dispute;
- Description of the issues involved; and
- Concise statement of the objections to the final decision.

TAG disputants are entitled to an informal conference with EPA officials and to a written decision from the RA. If the disputant is not satisfied with the RA's decision, he or she must request review of the RA's decision by the Assistant Administrator (AA) for the Office of Solid Waste and Emergency Response (using the procedure described above). The AA does not have to review the appeal, but must inform the recipient in writing of his or her decision to let the RA's decision stand. If the AA reviews the RA's decision, his or her decision becomes the final EPA decision. Recipients must go through this appeals process before seeking judicial review of the issue under dispute.



Chapter 12: Other Technical Resources/ Community Grants



Community groups often contact EPA regional offices for information about obtaining technical assistance for dealing with environmental issues. The TAG program is the primary program through which EPA provides support to qualified citizens' groups to obtain technical assistance at NPL sites. However, not all groups meet TAG program eligibility requirements, and citizens at non-NPL sites cannot apply. EPA and other Federal agencies offer a variety of other resources to community groups at hazardous waste sites. These are outlined in this chapter. EPA project officers/TAG coordinators are encouraged to direct TAG recipients, as well as potential applicants who may not be qualified to receive a TAG, to these other resources.

12.1 The Technical Outreach Services for Communities (TOSC) Program

The TOSC program provides independent scientific and technical information to assist communities in developing an understanding of hazardous substances. Funded by EPA, TOSC services are provided by a national network of Hazardous Substance Research Centers (HSRCs) comprised of experts in environmental science and engineering from 29 leading universities. Education and other types of outreach assistance are available.

TOSC services are intended primarily for communities that cannot obtain TAGs or other types of Federal assistance, but the program is available to any community affected by a hazardous waste site. EPA regional offices, States, or local governments can nominate a site for TOSC assistance or can refer community groups to contact the regional HSRC directly. No application process is required.

The decision about whether a particular site receives assistance is made by the HSRC after a site is nominated for or requests assistance. While community groups that receive TAGs select their own technical advisors, technical advisors under TOSC are provided by the HSRC. Participating universities will provide scientific information but do not act as advocates for the recipient community group.

For more information, speak with your regional TOSC contact or the Headquarters TOSC contact:

Jennifer Brown

TOSC Program, U.S. EPA (5204 G)
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Washington, DC 20460
Telephone: 202/564-6922
Email: Brown.Jennifer@epa.gov
Web site: <http://www.hsrb.org/hsrc/html/tosc>

TAG regional staff may nominate sites for TOSC assistance, or community groups may contact regional HSRCs directly via telephone or email.



12.2 Technical Assistance for Public Participation (TAPP) (U.S. Department of Defense)

Members of U.S. Department of Defense (DoD) Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs) are eligible to receive assistance, in the form of technical analyses on topics of local concern at DoD environmental restoration sites, through the DoD's Technical Assistance for Public Participation (TAPP) program. RABs and TRCs provide a forum through which communities review and comment on DoD environmental restoration activities at military installations and formerly used defense sites.

Applicants must be members of an established RAB or TRC with at least three community members, whose majority requests TAPP assistance. DoD requires a formal application that community members must submit to the installation through the RAB or TRC co-chair. Once the base commander approves TAPP funds, RAB/TRC members may request a particular technical advisor, but DoD makes the final decision on hiring.

For more information, contact:

Patricia Ferrebee
Office of Assistant, Deputy Undersecretary of Defense (OADUD)
3400 Defense Pentagon, 3E787
Washington, DC 20301-3400
Telephone: 703-697-6107
Email: Patricia.Ferrebee@osd.mil
Web site: www.dtic.mil/envirodod/rab/2tappfact.html
www.dtic.mil/envirodod/rab/63fr_tapp.html
www.dtic.mil/envirodod/rab/poc.html

12.3 Citizen Monitoring and Technical Assistance Fund (U.S. Department of Energy)

The Citizen Monitoring and Technical Assistance Fund provides monies to eligible organizations to procure technical and scientific assistance to review and analyze environmental management activities at Department of Energy (DOE) sites.

Non-profit, non-governmental organizations and Federally recognized Tribal governments working on issues related to a DOE nuclear weapons complex are eligible to receive monies from the fund, which originally included \$6.25 million. Eligible applicants must submit a proposal to RESOLVE, Inc., which is administering the fund for DOE. The proposal must identify the technical and scientific issues that will be studied and identify an appropriately qualified expert to conduct the analysis. Applicants must agree to make publicly available in written form any scientific or technical review or analysis paid for by the fund.

For more information, contact:

Bruce Steadman or Robert Fisher
RESOLVE, Inc.
1255 23rd Street NW, Suite 275
Washington, DC 20037
Telephone: 202/944-2300
Email: info@resolv.org
Web site: www.em.doe.gov/settlement/funding.html



12.4 Potentially Responsible Parties (PRPs)

There are mechanisms that allow PRPs to directly arrange technical assistance to community groups, which may be available at some sites.

Technical Assistance Plans (TAPs): PRPs at some sites already have made direct arrangements for independent technical assistance to community groups, particularly at non-NPL sites, through TAPs. TAPs usually are incorporated into settlements between EPA and PRPs. (In a few cases, PRPs have "voluntarily" provided monies to community groups to hire a technical advisor outside of the context of a settlement. However, these arrangements may not have sufficient safeguards to assure that the technical assistance is independent of any undue PRP influence.) These agreements are part of a recent trend in negotiating settlements with PRPs for cleanups of non-NPL sites. As part of these settlements, regions are obligating PRPs to arrange for and finance technical assistance for local community groups. EPA's TAG program has been used as a template for structuring and administering TAPs.

These agreements can raise issues regarding how much, if at all, EPA should oversee the PRPs in their provision of the technical assistance. EPA's oversight role should be spelled out in the underlying settlement. Ideally, the settlement should specify EPA's role, if any, when different community groups submit competing applications for PRP funds, or when the selected community group has a dispute with the PRPs over selection of a technical advisor or payment of invoices.

At a minimum, EPA has a duty to oversee the PRPs' activities to ensure that they are complying with the settlement agreement. However, while EPA can (and should) oversee the expenditures by the PRPs, it should not actually manage or administer how the PRPs' monies are spent. Doing so may raise concerns that EPA is improperly augmenting its appropriation.

Several regions already have negotiated TAPs to arrange for technical assistance for various communities at NPL and non-NPL sites. Regional staff are strongly encouraged to contact their ORC to determine if a TAP may be a desirable option at a particular site. OECA is currently working to address many of the issues surrounding these special arrangements.

Site-Specific Special Accounts: As part of EPA's Superfund administrative reforms, EPA is strongly encouraging greater use of site-specific special accounts. EPA project officers/regional TAG coordinators should use these special account monies, rather than appropriated Superfund monies, when awarding a TAG to a community group at a site with a special account. (See Chapter 10.1 for a full discussion of Site-Specific Special Accounts.)

12.5 Other Community Grants

EPA provides support for technical assistance to communities addressing environmental concerns through a variety of other sources, including:

Project XL Technical Assistance Project: Through Project XL (eXcellence and Leadership), EPA enters into specific project agreements with public or private sector sponsors to test regulatory policy and procedural alternatives that will provide data and experiences to improve the current system of environmental regulation. Funding is administered by the Institute for Conservation Leadership (ICL).

Community-based groups, small local governments, and worker groups directly participating in XL projects are eligible to receive up to \$25,000 in funds to help build their capacity to make independent



and informed decisions about the project. Eligible stakeholder groups can apply by submitting a needs assessment and formal application to ICL. Applicants must have the support of all project participants for its funding request and for its choice of a technical advisor, and must document that other options for technical assistance have been pursued.

For more information, contact:

Institute for Conservation Leadership
6930 Carroll Avenue, Suite 420
Takoma Park, MD 20912
301/270-2900

Email: toicl@aol.com

Web site: http://yosemite.epa.gov/xl/xl_home.nsf/all/technicalassistancetxtfile.html/

Superfund Redevelopment Pilot Projects: The Superfund Redevelopment Pilot Project program is designed to demonstrate how political subdivisions can more effectively participate in predicting the future land uses of Superfund sites early in EPA's cleanup decision-making process. Up to \$100,000 in financial assistance and/or services is offered to political subdivisions (units of State or local government, Tribal organizations, or other entities of local government that qualify as "political subdivisions" under State law) that have Superfund sites or sites proposed for listing on the NPL within their jurisdiction.

Approved activities include:

- support for development of reuse assessments and reuse plans to predict the reasonably anticipated future land uses for the site;
- facilitation services by third parties who work with State and local government representatives to identify and involve community stakeholders in developing views on what future land uses might be reasonably predicted for the site;
- coordination among different levels of government, community members, and organizations interested in natural resources or economic development and community redevelopment;
- public outreach activities;
- training and workshops for community members and local governments on redevelopment issues related to the site;
- support for a community advisory group to inform and advice to the community in projecting reuse of the site; and
- other technical assistance to the community.

EPA targeted a group of 10 sites to serve as the first round of pilots. To broaden the pilot project, an open proposal process was developed for a second round of grants and announced in the *Federal Register*, and 40 pilot project grants were awarded in FY 2000.

For more information about the redevelopment or reuse of Superfund sites, Email reuse.info@epa.gov or call the Superfund Hotline at 800/424-9346 or 703/412-9810 (Washington DC area), or visit the Superfund Redevelopment Initiative Web site at: www.epa.gov/superfund/programs/recycle/pilotprg.htm.



Environmental Justice Grants: EPA Environmental Justice grants provide up to \$20,000 to eligible community groups and Federally recognized Tribal governments for projects that address environmental justice issues. Any affected community group, non-profit organization, university, or Tribal government is eligible to receive assistance, as long as it is incorporated. No matching share is required.

For more information, call the Office of Environmental Justice Hotline at 1-800-962-6215, or visit the Office of Environmental Justice Web site at: <http://es.epa.gov/oeca/oej/grlink1.html>.

Environmental Justice Pollution Prevention (EJP2) Grants: EJP2 grants empower low-income, high minority communities through education on environmental issues and financial support for pollution prevention projects. These projects must be undertaken by community-based organizations and local governments in affected environmental justice communities. Any tax-exempt non-profit organization is eligible to apply, as are Federally recognized Tribal governments and city, county, and State government organizations. Award amounts have not been determined, and no matching share is required.

For more information, contact the EJP2 Hotline at 703/841-0483 or visit the EJP2 Web site at www.epa.gov/opptintr/ejp2/.

Environmental Justice Community/University Partnerships: The Environmental Justice Community/University Partnership program helps community groups address local environmental justice issues through active partnerships with colleges and universities. Institutions of higher education that have formal partnerships with one or more community groups are eligible to apply.

For more information, visit the Environmental Justice Community/University Partnerships Web site at www.epa.gov/oeca/oej/cupoverview.html.

Environmental Education Grants: Environmental Education Grants provide financial support for projects that design, demonstrate, or disseminate environmental education practices, methods, or techniques. Eligible applicants are local or Tribal education agencies; State government, educational, or environmental agencies; institutions of higher education; and non-commercial broadcasting entities. Up to \$25,000 may be granted by the EPA regional office. Grants over \$25,000 are awarded by EPA Headquarters. A 25 percent matching share is required.

For more information, contact the EPA Office of Environmental Education at 202/260-8619 or visit the Environmental Education Web site at www.epa.gov/enviroed/grants.html.

Environmental Monitoring for Public Access & Community Tracking (EMPACT):

The goal of EPA's Environmental Monitoring for Public Access & Community Tracking (EMPACT) program is to establish pilot programs to collect and communicate time-relevant environmental monitoring information that can help individuals make informed day-to-day decisions about their health and environment. Applications are limited to local governments located in one of the 86 EMPACT metropolitan areas. Awards range from \$250,000 to \$500,000, and a 5 percent matching share is required.

For more information, contact the EPA EMPACT program, at 202/564-3234 or visit the EMPACT Web site at: www.epa.gov/empact.

Brownfields Assessment Demonstration Pilots, Cleanup Revolving Loan Fund Pilots, and Job Training and Development Pilots: EPA Brownfields pilot projects empower localities to work with public and private stakeholders to prevent, assess, safely cleanup, and sustainably reuse abandoned, idle, or underused properties where real or perceived contamination has impeded development. Political subdivisions and Tribes are eligible to apply for Brownfields Assessment Demonstration Pilots. Existing



Assessment Pilot awardees are eligible to apply for Revolving Loan Pilots. Non-profit training centers, colleges, and public entities that serve existing Assessment Pilot areas are eligible to apply for Brownfields Job Training and Development Pilot funds. Awards of up to \$200,000 for two-year projects are made for the Brownfields Assessment Demonstration Pilot projects and Job Training and Development Pilot projects, and up to \$500,000 for Revolving Loan Fund projects.

For more information, contact the regional Brownfields Program Coordinator or visit the Brownfields Web site at: www.epa.gov/swerosps/bf/index.html.

Sustainable Development Challenge Grants: The Sustainable Development Challenge Grant program provides seed money to leverage investment for locally developed, innovative projects that address serious environmental problems through the application of sustainable development strategies. Eligible applicants are non-profit organizations, educational institutions, and State and local governments, Tribes, and territories. Applicants compete for grants in one of two categories: \$50,000 or less, or \$50,000 to \$200,000. A 20 percent matching share is required, which may include in-kind contributions.

For more information, contact the Sustainable Development Challenge Grants program at 202/2600-6812 or visit the EPA Office of Reinvention Web site at: www.epa.gov/ecocommunity/sdcg/.

Regional Information about Grants and Other Funding Sources:

Region 1 (CT, MA, ME, NH, RI, VT) Grants Information—including community funding sources and environmental education grants program. Visit <http://www.epa.gov/region01/grants/index.html>.

Region 2 (NJ, NY, Puerto Rico, Virgin Islands) Grants information—such as a collection of grant programs including Brownfields, environmental education, environmental justice and Superfund available to the Region 2 community. Visit <http://www.epa.gov/region02/cgp/cgphmpg.htm>.

Region 5 (IL, IN, MI, MN, OH, WI) Funding Sources—including a table that provides a quick way to review several grant and funding sources. Visit http://www.epa.gov/seahome/resources/funding_sources.htm.

Region 9 (AZ, CA, HI, NV, American Samoa, Guam) Funding Sources—including community funding sources and funding for solid waste projects. Visit <http://www.epa.gov/region09/funding/index.html>.



A. TAG Rule and Related Documents

- 40 CFR Part 35, Subpart M—Final TAG Rule (October 2, 2000)
- Crosswalk Comparison of the October 2000 Final TAG Rule and Previous (1992) TAG Rule
- Glossary

B. Sample Materials

- Fact Sheet with Notice of TAG Availability (Region 3)
- Community Notification Public Notices (Region 3, Region 8)
- Technical Advisor Contract (Region 8)
- Grant Administrator Contract (Region 3)
- Contract Review Letter (Region 4)
- Request for Reimbursement Certification Form (Region 4)
- Sample Recipient Quarterly Report Format (Region 4)
- EFT Enrollment and Processing Forms (Region 10)
- Technical Completion Memorandum (for Closeout) (Region 2)
- Sample Letters to Recipients Regarding Record Retention Options (Headquarters)

C. TAG Program Fact Sheets

- Technical Assistance Grants (TAG): Program Fact Sheet
- Technical Assistance Grants (TAG): Applying For a TAG
- Technical Assistance Grants (TAG): Managing Your TAG
- Technical Assistance Grants (TAG): Finding, Choosing and Hiring a Technical Advisor
- Technical Assistance Grants (TAG): Application Forms and Instructions
- Technical Assistance Grants (TAG): Incorporation and Tax-Exempt Status

D. Other Guidance and Reference Materials

- ATSDR Guidance for Participating in EPA's Technical Assistance Grant Program
- 40 CFR Part 30—Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations
- Office of Management and Budget Circular A-110—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

